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Lord Keeper Guilford.

THE

LIFE

OF THE

RIGHT HONOURABLE

FRANCIS NORTH,

BARON OF GUILFORD,

LORD KEEPER OF THE GREAT SEAL, UNDER KING CHARLES II. AND KING JAMES II.

WHEREIN ARE INSERTED,

THE CHARACTERS OF SIR MATTHEW HALE, SIR GEORGE JEFFRIES, SIR LEOLINE JENKINS, SIDNEY GODOLPHIN,

AND OTHERS THE MOST EMINENT LAWYERS AND STATESMEN OF THAT TIME.

23573

BY THE HON. ROGER NORTH.

Unus oculatus testis præstat auritis decem.

SECOND EDITION.

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TO THE

RIGHT HON. FRANCIS,

LORD NORTH AND GUILFORD,

ONE OF THE LORDS OF THE BEDCHAMBER TO HIS ROYAL HIGHNESS THE PRINCE OF WALES.

My Lord,

IT is a piece of justice done to the memories of great and good men, who have been active in the service of their country, when their conduct and behaviour is set in a true light, and their characters cleared from all exceptions whatsoever, which may proceed either from ignorance of the truth, or party rage. And it must afford no less encouragement to the present age, to follow their steps, when they shall find it is not often that a man of worth appears upon the great stage of the world, but after he has finished the part he was to act, and made his *exit*, some one or other rises up, and undertakes to vindicate the character of his departed friend.

The performance of this, my Lord, appears to have been one of the principal ends the honourable author had in view, when he composed the following sheets: For though truth in history, and the public good flowing from thence, had ever the greatest share in his inducements, whenever he set pen to paper; yet here

there must be something put to the account of gratitude. And how large a debt of this nature must be due, from any one, to him that was the best of brothers and the best of friends, the whole world must be sensible. How well the writer has succeeded in his attempt to discharge it, must be left to the determination of those who shall peruse this work.

And the same arguments ought to be no less prevalent with me towards the sending it abroad into the world, and preferring my request unto your lordship, that it may have leave to pass under your protection. For as my father thought it his duty to leave behind him these papers, not only for the sake of truth but, to make some return for the benefits heaped upon him by this illustrious ancestor of your Lordship's, and his best brother; so I think myself bound to make them publick, for the former reason, and to beg they may be honoured with your Lordship's name in the front, as a publick acknowledgement of the many favours your Lordship has conferred upon

My Lord,
Your Lordship's
most obedient,
and obliged
humble Servant,
MOUNTAGU NORTH.

THE

AUTHOR's PREFACE.

IT may not be improper to acquaint the Reader, in ſome ſort, with what is to be found in the following ſheets; the deſign of which is to make ſome apology for an officious, I might ſay unqualified, undertaking to be a life-writer, and, as ſuch, to dreſs up my remembrances of three honourable brothers and friends, the late Lord Keeper North, Sir Dudley North, and Dr. John North. They were all perſons of celebrated worth and ability in their ſeveral profeſſions; and whoſe behaviour upon the public ſtage, as well as in their retirements, was virtuous, wiſe, and exemplary. But now, if they are not quite forgot, that little, which is whiſpered of them, inclines to the ſiniſter, and is wider from truth, than the diſtance which we are now at from the time when they flouriſhed: and, if we look out

for their names in hiſtory, all is the ſame. There is a two-handed one (Mr. Echard) in folio, whoſe excellency is *coming after a worſe*. The author, among his eulogies, could not find room to drop a good word of any of theſe, though he hath condeſcended to adorn the characters of departed quacks, poets, fanaticks, and almanack-makers. When he could ſay no ill of them, it was prudent malice to ſay nothing. Better to forego the very marrow of hiſtory than do right to any of theſe. And if the conſideration of common good, which always flows from the bright examples of good men, were not inducement enough, yet the uſage of ſuch poor-ſpirited writers, that hunt counter to that good, is a ſufficient call to this undertaking; whereby I hope to reſcue the memories of theſe diſtinguiſhed perſons from a malevolent intent to oppreſs them, and, for that end, bring their names and characters above-board, that all people may judge of them as they ſhall appear to deſerve. I have reaſon to be concerned, leſt my tenuity of ſtyle and language, not meeting with candid interpretation may, in ſome ſort,

diminiſh the worth that belongs to them. But I have no means of improvement in that affair; and muſt lay aſide that ſcruple; for it is an office, devolved upon me, which I cannot decline. There is no perſon, now living, who can, or at leaſt will, do any thing towards it. Therefore, hoping for indulgence, I march on, and endeavour to rectify want of art by *copia* of matter, and that, upon honour, punctually true. But I am not at all concerned leaſt frequent eulogies (which, by way of *avant propos*, I muſt here declare will advance themſelves) ſhould make me appear as partial to my ſubject. For who is partial that ſays what he knows, and ſincerely thinks? I would not, as ſome, to ſeem impartial, do no right to any. When actions are honourable, the honour is as much the hiſtory as the fact; and ſo for infamy. It is juſtice, as well hiſtorical as civil, to give to every one his due. And whoever engageth in ſuch deſigns as theſe, and governs himſelf by other meaſures, may be a chronographer, but a very imperfect, or rather inſipid, hiſtorian.

I muſt here juſt mention ſome things which

concern all theſe three brothers in common; and that is their parentele and family relation: and then proceed to the lives, beginning with the eldeſt the Lord Guilford, lord keeper of the great ſeal of England, then the ſecond, Sir Dudley North, and come at laſt to Dr. John North, maſter of Trinity College, Cambridge.

Sir Dudley North, knight of the Bath, and Lord North, baron of Kirtling (*vulgo Catlidge*) in Cambridgſhire, was their father. His father was Dudley alſo, and had three other children. Firſt, a ſon named John, who had three wives, of whom the firſt beſt deſerves to be remembered; for ſhe left him an eſtate in St. John's-Court by Smithfield, upon the ground where the chief houſe and garden was placed; and now a ſet of fair houſes are built, making three ſides of a ſquare, and is called North's-Court. He ſurvived all his wives, and died without iſſue. The old lord had alſo two daughters, of whom one died ſingle, the other, Dorothy, married the Lord Dacres of the ſouth, and, by that match, had a ſon and a daughter; the ſon married the Iriſh Lord Loftus's

daughter, and had diverſe children. He had an eſtate given him on purpoſe to change his name from Leonard (that of the Dacres family) to Barret. His eldeſt ſon is alſo matched, and hath children. His ſeat is at Bell-Houſe Park near Purfleet in Eſſex; and they write their name Barret, alias Leonard. The Lord Dacres had iſſue by a former wife, of whom the now Earl of Suſſex is deſcended. After the death of the Lord Dacres, his widow, the Lord North's daughter, married Chaloner Chute who was once ſpeaker to the pſeudo-houſe of commons. She had no iſſue by him; but his ſon Chaloner (by a former wife) marrying his wife's daughter (by the Lord Dacres) had iſſue three ſons and a daughter. Chaloner, the eldeſt, died ſingle; Edmund, the ſecond, married the widow of Mr. Tracey, a daughter of Sir Anthony Keck, and having diverſe children, lived at the Vine in Hampſhire. The youngeſt, Thomas, was once clerk of the crown in Chancery, and married the daughter of Rivet of Brandeſton in Suffolk, and left children, of whom Thomas Leonard Chute,

the eldeſt ſon, now lives at Pickenham in Norfolk. And here concludes all the deſcent from the old Lord North by his only married daughter the Lady Dacres.

That nobleman was a perſon full of ſpirit and flame; yet, after he had conſumed the greateſt part of his eſtate in the gallantries of King James's court, or rather his ſon Prince Henry's, retired, and lived more honourably in the country upon what was left, than ever he had done before. He bred his eldeſt ſon Dudley, the father of theſe three brothers, after the beſt manner; for, beſides the court, and choiceſt company at home, he was entered among the knights of the Bath, and ſent to travel, and then into the army, and ſerved as a captain under Sir Francis Vere. At length he married Anne, one of the daughters and coheirs of Sir Charles Mountagu. He ſerved his country in diverſe parliaments, and was miſled to ſit in that of forty, till he was ſecluded. After which he lived privately in the country, and, towards the latter end of his life, entertained himſelf with juſtice-buſineſs, books, and (as a very numerous

iſſue required) œconomy. He put out a little tract of that ſubject, with a preface lightly touching the chief criſes of his life. Afterwards he publiſhed a ſmall piece entitled, *Paſſages relating to the Long Parliament* with an apologetic, or rather, recantation preface. He wrote alſo the hiſtory of the life of the Lord Edward North the firſt baron of the family, from whoſe daughter the Dukes of Beaufort are deſcended. He was a chriſtian ſpeculatively orthodox and good; regularly charitable and pious in his family, rigidly juſt in his dealing, and exquiſitely virtuous and ſober in his perſon. All which will appear in his writings, although the ſtyle is not ſo poignant as his father's was. But, to purſue the relation, his lady, by the mother's ſide, was deſcended of Sir George Whitmore, once, lord mayor of London; which opens a large kindred towards Wales, of which it is ſaid that above thirty came into coparcenary ſhares of the eſtate of Sir Charles Kemiſh. Her father was the beforementioned Sir Charles Mountagu, of five the youngeſt brother, of the Boughton family, now honoured with a

dukedom. From the other brothers as many noble families are alſo derived, as Mancheſter, Sandwich, and Hallifax. Sir Charles had two other daughters, one married the Lord Hatton, and had diverſe children, and, amongſt the reſt, the * incomparable Captain Charles Hatton. The other daughter married Sir Edward Baſh of Hertfordſhire, who died without iſſue; then ſhe married Mr. John Cary of the Falkland family, and maſter of the buck-hounds under King Charles II. and died alſo without iſſue.

This laſt Dudley Lord North and his lady had ſix ſons and four daughters who lived to appear in the world, beſides ſome who died in minority, viz. Frances, Edward, and Dorothy. The eldeſt ſon was Charles, who received the honour of knighthood, and married Catherine the daughter of William Lord Grey of Wark; and was, in his father's life-time, called by writ to the houſe of peers, by the title of Charles Grey of

* The reaſon why the honourable author joins the epithet *incomparable* to this gentleman's name will be ſeen from a ſtory which will be related in the life of Dr. John North.

Rolleſton. They had two ſons and two daughters who ſurvived. The eldeſt ſon, William, is the preſent Lord North and Grey, who is matched with Maria Margareta one of the daughters of Mr. C. de jonge van Ellemete, late receiver of the United Netherlands. The ſecond ſon, Charles, a major in the late wars in Flanders, died there of a calenture. The eldeſt ſiſter Catherine died at ſea coming from Barbadoes: and the youngeſt named Dudleya, having emaciated herſelf with ſtudy, whereby ſhe had made familiar to her, not only the Greek and Latin, but, the Oriental Languages, under the infliction of a ſedentary diſtemper, died alſo; and both without iſſue. Her library, conſiſting of a choice collection of oriental books, by the preſent Lord North and Grey her only ſurviving brother, was given to the parochial library of Rougham in Norfolk, where it remains. The Lord North's ſecond ſon, Francis, the third ſon, Dudley, and the fourth, John, are the ſubject of the three life treatiſes intended to follow, where will be remembered the ſtate of their families. The fifth ſon was Moun-

tagu, a Levant merchant, who died without iſſue. The youngeſt, Roger, married Mary the daughter of Sir Robert Gayer of Stoke Poges near Windſor, and having had two ſons, Roger and Mountagu, and five daughters, Elizabeth, Ann, Mary, Catherine, and Chriſtian, lives (out of the way) at Rougham in Norfolk.

Of the four daughters of Dudley Lord North, the eldeſt, Mary, was married to Sir William Spring of Pakenham by Bury in Suffolk. She had iſſue a ſon, but lived not to have any more, and the ſon died in his infancy. The ſecond daughter, Ann, married Mr. Robert Foley, a younger branch of the (now) Lord Foley's family; and their eldeſt ſon North Foley, having married a daughter of Sir Charles Holt of Warwickſhire, lives now at Stourbridge in Worceſterſhire. The third daughter, Elizabeth, married Sir Robert Wiſeman, a younger ſon of the Rivenhall family in Eſſex, dean of the arches, who dying without iſſue, ſhe is ſince married to the Earl of Yarmouth. The fourth and youngeſt daughter, Chriſtian, married Sir George Wenieve of Brettenham

in Suffolk. And they have left diverſe children; of whom the eldeſt, John, married a daughter of Sir Chriſtopher Muſgrave, and now reſides in the place of his father at Brettenham. This is the family relation of theſe three brothers whoſe lives are upon the carpet before me. So much of particularity concerning them (although a juſt pedigree ought to have taken in much more) may perhaps be thought ſuperfluous, as not being of any general concern. Yet really the caſe is memorable for the happy circumſtance of a flock, ſo numerous and diffuſed as this, of the laſt Dudley Lord North's, was, and no one ſcabby ſheep in it, conſidering what temptations and ſnares have lain in their way, is not of every day's notice. It was their good fortune to be ſurrounded with kindred of the greateſt eſtimation and value, which are a ſort of obligation to a good behaviour. It is very unfortunate for any one to ſtray from the paths of virtue, who hath ſuch precautions, and ſonorous memento's, on all ſides of him: and it is almoſt enough to be educated in a family wherein was no inſtance of irreligion or immorality

either practiſed or allowed. Such virtue, or efficacy, hath an early example to affect the manners of good-natured youth. I would not have it thought that, beyond this advantage, I hold forth a family relation, as matter of merit, to any one in particular; but ſay only that, allowing no peculiar intrinſick worth, in a particular perſon, derivable from the honour of his family (becauſe his own value, and not his anceſtors, muſt ſet him off) although ſuch a circumſtance is not to be ſlighted, yet there is ſome good comes of it; which is that the deſcendants muſt know that the world expects more from them than from common men: and ſuch a perpetual monitor is an uſeful companion. And if there be any perſons of ſuch upſtart principles that, with them, antiquity of families is rather matter of ridicule than of honour, let them enjoy their epicurean proſpect, and ſee their poſterity run riot into deſtruction, before the earth covers the corruptible ingredients of their compoſition.

THE

LIFE

OF THE

RIGHT HON. FRANCIS NORTH,

LORD GUILFORD,

LATE

LORD KEEPER OF THE GREAT SEAL OF ENGLAND.

Introduction ſhewing the deſign and reaſon.

MY deſign is to leave behind me all that I can remember or warrantably collect concerning the life of the Lord Keeper North. A work much needed; and to which I am indeed provoked, becauſe I find an affected endeavour of a prevailing ſort of men in theſe latter times, and eſpecially the more ſolemn writers of Engliſh affairs, to ſuppreſs all memory of his Lordſhip's name and worth, to the end that his character and behaviour in the courſe of his great employments ſhould be utterly unknown to after-times, as if no ſuch perſon had ever lived in the world. I ſhall alledge but one inſtance, and that is an egregious one. A late double-columned hiſtorian, in folio, of whom men-

tion has been made already in the preface, writing the affairs of England, and in particular what fell out in the reign of King Charles II. hath taken upon him to characteriſe the famous men that died in his ſeveral years; and yet of the Lord Keeper North no ſingle word ſlips from his pen, and one muſt look very hard to find ſo much as his name in the whole work: and conſidering the value of that great juſtitiar (which I hope will be made appear in what follows) is not ſo notorious partiality, in ſuch a pompous writer of hiſtory, wonderful? But not only there, but in all the other writers of thoſe times, when the quality of thoſe things related require him to be named, however the actions or occaſion might deſerve, it is done in an ill-natured manner, and with a leer, implying rather diſgrace than any honour to his memory. And ſince his death we do not find in ordinary converſe, or conſultation of things paſt, any mention of him, or, at moſt, but as one that had been preferred to ſerve turns; and ſo, dying, there was an end of him.

Declined fame in all things.

Now here to make the faireſt conſtruction of this ſilence in a caſe ſo eminent, and aſcribe it chiefly to ignorance, although I think time-ſervingneſs and malice hath the greateſt ſhare, I will ſhew that in his Lordſhip's caſe there was leſs obvious means for fame than in any other great man's caſe whatever. For firſt, he was quite out of

favour with the buſy agitating party of men in his time, then termed the fanatic party; and thoſe are the chief architects of fame: and having nothing ill to ſay of him, they would ſay no good, and therefore choſe to ſay nothing at all. If he had acted in theſe men's meaſures, and, betraying his maſter, took in with them, and become their property, he had certainly been the moſt illuſtrious hero in the law that ever was heard of. Another reaſon is derived from his Lordſhip's own conduct of himſelf, which was always with the greateſt modeſty, and the leaſt affectation of fame that could be. He rather withdrew himſelf from it, as being, in his opinion, an empty vanity; and ever labouring to act well and ſubſtantially, as concerned for the truth and intelligence of things, and not for any honour to be got thereby, he ſcarce ever did any thing for ſhew, or ſpoke a word for the ſake of mere ſound or oſtentation; but in all he did, to have reaſon on his ſide, and to make himſelf therein readily underſtood, was all that he aimed at: otherwiſe he bore himſelf retired from public view and eclat as much as ever he could. It is no great wonder therefore that nothing pompous hath been remembered of him. If he had carried it high, headed parties, and embraced the management of what had not belonged to him, and the like, it had been otherwiſe; or if he had printed his collections in the law, of which he had

made ſome conſiderable, or the other tracts he had in his mind to make fit for the uſe of his time, or done any thing elſe, which ordinarily great men do for fame and honour, he might have left a name behind him great as he deſerved; but he never let any thing come to the preſs under his name but what belonged to his office, or was abſolutely neceſſary for his vindication. It is no wonder therefore that (the malice or ignorance of hiſtorians apart) there is ſo little remembrance of this noble perſon's life and actions (ſo near his time as we are) now extant: and, probably, after a reign or two more, bating a formal liſt of Lord Keepers, that lets none eſcape, his very name will be forgot.

The engagements and means to this work.

Here is reaſon enough to incline any one, endued with competent information of the ſubject, and a literate capacity to digeſt and expreſs what he knows thereof, to reſcue this honourable perſon and his great abilities, his approved juſtice and integrity, and univerſal good will, from utter oblivion, by writing the hiſtory of his Lordſhip's life. But where do thoſe qualifications concur? The very expectation of them puts me in mind of latter Lammas. But it is uſual to ſay what good cannot be done in perfection, as it ſhould be, ought to be done, though but in part, or as it may be. And, upon force of that conſideration, I am inclined to undertake it;

ſof; if I am wanting in capacity to write as the ſubject deſerves, I am capable of informing others who may do it better; and am therein farther urged by the conſideration of my former felicities. For it was my good fortune to be ſo nearly allied to him, and, by circumſtances of education and profeſſion, ſo cloſely attached to his perſon, that we were almoſt inſeparable. Therefore, upon the ſtrength of the latter of theſe qualifications, whatever becomes of the former, which, in ſenſe of my own inability, I forbear to claim, I am induced to undertake this great work, which I would have underſtood to be rather inſtructions, than hiſtory. And if I am required to give an account of my great confidence therein, I muſt alledge that, if I am not the beſt inſtructed of any man living for it, it is my own fault; becauſe I paſſed almoſt all the active time of my life in his company. And now almoſt all perſons of his intimacy, capable or concerned to remember much of him are dead, or at leaſt, after ſo many years, thoughtleſs of all they might once have known concerning him: but I am at this time left a living and ſenſible witneſs of his moſt public and moſt retired behaviour; and moreover a well qualified compurgator of all his thoughts and actions: and who elſe ſhould be called upon to ſhew to poſterity what he was? And alſo that there was once a magiſtrate of a kind, ſince the loſs of him (bar-

ring all compariſons) rather to be wiſhed than hoped for. And not only to ſupply hiſtory, which (after the partial gree of the late authors) has been, to all good purpoſes, ſilent of him, but alſo to refel calumny, whether ſpread abroad in his life, to ſupplant his intereſts, and to enervate his authority, or late, publiſhed after his death, to depreciate his memory; of which ſeveral ſpecies of malice we had, and have yet, ſome extant, but little, and even that little very impotent and inconſiderable: yet I cannot but think it in me a ſort of duty to puff away ſuch ſlight duſt, becauſe calumny, which riſeth after a man's death (the moſt unworthy and degenerous of all) needs moſt a friend to retund it; becauſe, as a man's authority and power ceaſeth, impudence gets ground, and thinks to ramp it without check; but, of theſe affairs, the particularities are referred to their proper ſituation. And here I muſt not omit one of the chief impulſes upon my ſpirits to undertake this work; I mean gratitude: for as, on the one ſide, no man is obliged to ſerve a friend or benefactor by any groſs immoralities, for that muſt be termed conſpiracy, not friendſhip; ſo on the other ſide, no man ought to be wanting to a friend, in any manner of juſtice, for no better reaſon than that ſome folks will miſconſtrue it, as being done for partiality. I own that all my portion of knowledge and fortunes are owing to him;

which makes me a debtor in account of juſtice and honour due to his memory; and for clearing myſelf as well as I may (proteſting in the mean while to ſay nothing falſe or diſguiſed) ſhall I not ſay what is juſt and true of him? I defy all calumny on that account, and I hope to acquit myſelf accordingly. And whereinſoever I may fail or come ſhort of the fullneſs or ornament ſuch a ſubject requires, I deſign ſecurely to ſet down nothing but what either perſonally I know and can atteſt, find declared in his writings, received from his own mouth, or have from indubitable report of others nearly enough informed to be eſteemed punctually true. I have another reaſon yet, which, for true value, may ſurmount all theſe; and that is a tendency to public good: a charm that all writers anoint their front with. Therefore I ſay only this, that if, in the character of a perſon of honour, I ſhew an example of induſtry, ingenuity, probity, virtue, juſtice, and, in the courſe of all theſe, deſervedly ſucceſsful, without one minute retrograde, but concluding all at once by a natural death, and that in the height of his honour, I ſhall commit no act of diſſervice to mankind in general, and leaſt of all to thoſe of the nobility, whoſe deſcendants embarking in the profeſſion of the law, may find the greateſt encouragement from it. It may be thought I have touched here too much upon the panegyric, and forget how

hard it is to make good ſuch promiſes. I muſt truſt to that; and do but alledge here that the nature of this work, and my reaſons for undertaking it, required no leſs; which being the proper introduction, I have not formaliſed upon what I am fully poſſeſſed is moſt true.

Method or diſpoſition.

It will be hard to lead a thread, in good order of time, through his Lordſhip's whole life; for there are many and various incidents to be remembered, which will interfere, and make it neceſſary to ſtep back ſometimes, and then again forwards; and to ſay truth, I have not the punctualities of times at my command, and may err in ſome points of chronography. I ſhall therefore, for diſtinction ſake, break the courſe of his Lordſhip's life into four ſtages; whereof the firſt ſhall be from his Lordſhip's infancy to his being qualified to practiſe in the law, and called to the bar: the ſecond ſhall be from the time of his firſt practice until he was advanced to the poſt of a judge, and made Lord Chief Juſtice of the Common Pleas: the third, while he acted as judge of the Common Law, until he was preferred to be Lord Keeper of the Great Seal: and the fourth and laſt ſtage, while he ſat as judge of Equity in the Chancery, and attended the affairs of ſtate at court, until the time of his death, which happened at Wroxton, on the 5th of September, 1685. And, in this method, I hope to evacuate my mind of

every matter and thing I know and can remember materially concerning his Lordſhip. And if ſome things are ſet down which many may think too trivial, let it be conſidered, that the ſmaller incidents in the life of a buſy man are often as uſeful to be known, though not ſo diverting as the greater; and profit muſt always ſhare with entertainment: and let this be the apology for ſome light paſſages that will be found related in the courſe of this work.

His Lordſhip left many papers wrote with his own hand, ſome more perfect than others, and very few entirely ſo; and thoſe which are finiſhed, or nearly completed according as he intended them, I have put together in collections; but as for thoſe which are ſhort and imperfect, conſiſting of ſome ſketches of deſigns, hints, conſultations, collections, enquiries, and the like, which commonly were the reſult of his thoughts and reſearches upon affairs then in agitation abroad, and are like painters' firſt ſcratches, which commonly have more ſpirit than their more finiſhed pieces; I ſhall inſert the moſt material of them in the text of the relations to which they belong; for theſe will repreſent his Lordſhip's way of reaſoning with himſelf and others, and how cloſe his thoughts were applied to the ſubſtance and truth of things, more perhaps than (as was hinted of painters) his fuller tracts will appear to do; and by this means I hope to give a clear ac- Writings how diſpoſed.

count of all I know or can gather of his Lordſhip's life, interior and exterior, whereby, in one place or other, there may be found a great man's life and entire character; and beſides what will ſerve to entertain any one who hath a mind to drone away a few minutes that ſleep will not conſume, and alſo improve (perhaps) ſome whom the love of truth, reaſon, and rectitude of will, ſhall diſpoſe to be more attentive.

Family and parentele.

His Lordſhip was the third ſon of the ſecond Dudley Lord North, Baron of Kirtling, &c. as is to be found in the preface before this work, and therefore ſhall not reiterate it here. We have little to ſay of him during his minor years, but ſhall make amends afterwards; for from the firſt to the laſt of his manhood, he walked the public ſtage of buſineſs, ever erect and riſing, and made no retreat or exit but one, and that (as I ſaid before) was from the top of his preferment, and the world together.

School education and praying by the ſpirit.

His Lordſhip was very young when he was firſt put out to ſchool, and then had but indifferent tutorage, for his firſt maſter was one Mr. Willis, that kept a ſchool at Iſleworth. That man was a rigid preſbyterian, and his wife a furious independant. Thoſe two ſects, at that time, contended for preeminence in tyranny, and reaping the fruits of too ſucceſsful rebellion, which conjured up a ſpirit of oppoſition betwixt them, ſo that they hated each other more than either

the biſhops, or even papiſts themſelves. Such is the ordinary curſe of God upon men permitted to proſper in wickedneſs: and this woman was ſo zealous in her way, that thinking it a ſin, ſhe would ſcarce let her carnal huſband have conjugal intimacy with her. She uſed to inſtruct her babes in the gift of praying by the ſpirit; and all the ſcholars were made to kneel by a bed-ſide and pray: but this petit ſpark was too ſmall for that poſture, and was ſet upon the bed to kneel with his face to a pillow; and in this exerciſe of ſpiritual prayer, they had their directory from her. I have heard his Lordſhip ſay, that all he could remember of his performances, was praying for his diſtreſſed brethren in Ireland. Very often men in their lives croſs the humour of the age in which they had their firſt education; and in fact it happened ſo here, for this youth went from one of theſe fanatic ſchools to another for diverſe years, and afterwards, being grown up, was very averſe to fanaticiſm; as if he had in his education contracted rather a prejudice than a favour for it.

Bury, a cavalier ſchool.

But much may be attributed to the finiſhing of him at Bury ſchool, under Dr. Stevens, a cavalier maſter. He was ſo forward and exact a ſcholar there, that the bulky Doctor, in his pedantic ſtrain, uſed to ſay he was the crown of all his endeavours. Before he went to Cambridge, the maſter em-

ployed him to make an alphabetical index of all the verbs neuter; and he did it ſo completely, that the Doctor had it printed with Lilly's grammar, for the proper uſe of his own ſchool. This, however eaſy to be done, (being only tranſcribing out of the dictionary) was commendable; becauſe boys ordinarily have not a ſteady application, and, being required, ſeldom perform, induſtriouſly and neatly, ſuch a taſk as that is.

At St. John's College, in Cambridge, forward and facetious.

From this ſchool he was tranſlated to St. John's college, in Cambridge, where he was admitted fellow-commoner under one Mr. Froſt, the 8th day of June, 1653. And there he improved at the ſame rate, and being a fellow-commoner, was acceptable to the very beſt of the ſociety, as well for his company, which was more than ordinary agreeable and facetious, as for his forwardneſs in all ingenious ſtudies, and the ſciences called liberal. Here he learnt what was to be had of Univerſity philoſophy, old and new: applied to mathematics, and made great advances in them, capable of the utmoſt courſe therein, if other affairs of his life, inconſiſtent with ſuch applications, had not forbad that. But he was ever a judge of new propoſitions after the ſynthetic way (for the analytic was not then much profeſſed) and if they failed could ſhew where; and here he began his uſe of muſic, learning to play on the baſs-viol, and had the opportunity of practice ſo much in his grandfather's

and father's families, where the entertainment of muſic in full conſort was ſolemn and frequent, that he outdid all his teachers, and became one of the neateſt violiſts of his time. He was much encouraged and aſſiſted in all ingenious ſtudies by the converſation of one Mr. Matthews, of Sidney college, who was his elder brother's tutor, and very eminent for a maſter (literally) of all arts and ſciences, and was entruſted with the education of diverſe noblemen as their tutor; and a famous man he had been indeed if his heart could have been ſhewed without a microſcope.

His Lordſhip was originally deſigned for the profeſſion of the law; and accordingly, after two or three years ſpent at the Univerſity, removed to the Middle Temple, into a moiety of a petit chamber, which his father bought for him. He was admitted in the year ——, when old Chaloner Chute was treaſurer. It was he that ſometime officiated as ſpeaker to the Pſeudo-Houſe of Commons, and had married the Lady Dacres, his Lordſhip's aunt, and ſo was in the place of an uncle. This Mr. Chute was a man of great wit, and ſtately carriage of himſelf: I ſhall mention here what I have been credibly told as one inſtance of his loftineſs, even while he practiſed in Chancery. It was in ſhort but this: if he had a fancy not to have the fatigue of buſineſs, but to paſs his time in pleaſure after his own

Admitted of the Middle-Temple, by Mr. Chute.

humour, he would ſay to his clerk, *tell the people I will not practiſe this term;* and was as good as his word: and then no one durſt come near him with buſineſs. But when his clerks ſignified he would take buſineſs, he was in the ſame advanced poſt at the bar, fully redintegrated as before, and his practice nothing ſhrunk by the diſcontinuance. I gueſs that no eminent chancery practiſer ever did, or will do the like; and it ſhews a tranſcendent genius, ſuperior to the ſlavery of a gainful profeſſion. But to proceed: when Sir Dudley North, his Lordſhip's father, carried him to his brother-in-law, then treaſurer of the Middle Temple, to be admitted, he treated hard with him about the fine of admiſſion, which is in the treaſurer's power to tax, and he may uſe any one well if he pleaſeth. Mr. Treaſurer aſked Sir Dudley what he was willing to give, and (the common fine being five pounds) he anſwered, three pounds ten ſhillings. *Well,* ſaid the treaſurer, *lay down the money.* Which being done, he called for the young man's hat, and ſwept it all in and gave it him; and marking the admiſſion nill, or nothing, *let this,* ſaid he, *be a beginning of your getting money here;* where his Lordſhip made good the omen.

With the law ſtudied arts and languages.

How ſedulouſly he applied himſelf to the ſtudy of the law, I need not alledge; his performances in the courſe of his profeſſion, to ſay nothing of his preferments (though

ſometimes perhaps owing to good fortune) demonſtrate he was not wanting in that application: but it was ſingular and remarkable in him that, together with the ſtudy of the law, which is thought ordinarily to devour the whole ſtudious time of a young gentleman, and at beſt is but an unpolite ſtudy, he continued to purſue his enquiries into all ingenious arts, hiſtory, humanity, and languages; whereby he became not only a good lawyer but a good hiſtorian, politician, mathematician, natural philoſopher, and I muſt add, muſician in perfection. I have heard him ſay, that if he had not enabled himſelf by theſe ſtudies, and particularly his practice of muſic upon his baſe, or lyra viol (which he uſed to touch lute faſhion upon his knees) to divert himſelf alone, he had never been a lawyer. His mind was ſo airy and volatile, he could not have kept his chamber, if he muſt needs be there, ſtaked down purely to the drudgery of the law, whether in ſtudy or practice: and yet upon ſuch a leaden propoſition, ſo painful to briſk ſpirits, all the ſucceſs of the profeſſion, regularly purſued, depends. And without acquiring a capacity of making a ſolitary life agreeable, let no man pretend to ſucceſs in the law. I have heard his Lordſhip often remember a leſſon the citizens uſed to their apprentices—*Keep your ſhop, and your ſhop will keep you;* as being no leſs true of a lawyer with reſpect to his chamber.

But he was far from being a recluſe; and as he loved converſation, ſo at fit times he was abroad with agreeable company, at entertainments, ſuch as the inns of court gentlemen ordinarily uſe.

Declined the uſages of bad company.

I never heard that he frequented either dancing or fencing ſchools; which two rendezvouſes are very dangerous as well as expenſive to young gentlemen; and that conſideration outweighs all the pretended advantages that the female faction propoſe from thoſe aſſemblies. And for ſecurity of future good conſequences, and eſcaping the bad, I think it may be a general rule in the inſtitution of a lawyer, never to come to either; for ſince it is well known that the accidents of good or bad company determines, ordinarily, a young man to his happineſs or ruin, and that the worſt of company is to be met with there, one may bate the decorums of the ſtep, or the ſkill of parry and thruſt, in one who is to wear a long robe, and contend only with his oral faculty. I might ſay as much of places of game; but that entertainment is a gulph which ſwallows more elder than younger brothers, and more that have money gotten to their hands, than ſuch as have but enough to live in a way as may enable them to get more; but I cannot ſay that his Lordſhip was a ſtranger to any art or ſkill that was practiſed amongſt the better ſort of company. He joined in every decent thing; and whatever

games were ſtirring, at places where he retired, as gammon, gleek, piquet, or even the merry main, he made one; but ever had a notable regard to his purſe, to keep that from overſetting, like a veſſel at ſea that hath too much ſail and too little ballaſt.

Hazards and advantages of youth.

It is impoſſible for any youth to gather ſociable good qualities without running ſome hazard of the bad; and much of the better, where it happens, will be aſcribed to a well-inclined nature, that, after exceſſes (which youth cannot wholly avoid) diſcerning the inconvenience, takes up. But yet, in ſome of the wavering and leſs thinking genius's, the worſt of company will cauſe the worſt of effects; whereas, in a tolerable ſociety at firſt, ſuch natures might have come off well enough. It were rare ſailing if winds and weather were either at command or foreſeen. So, in the launching young people into the world, it were happy if natural propenſities and company could be known beforehand, or modelled to the occaſion. Therefore that great work ever did, and ever will, depend much upon the common accidents of human life; and it is a great queſtion, whether too much, or too little uſe of over-ruling authority, or perſuaſive diſcourſes, do moſt or leaſt harm. Probably either, coming opportunely, may do good; but, inopportunely, excites averſion rather than reconciliation to what

is ſo. Let a youth be prepared at home, without any prejudice of evil examples or encouragements, and then be ſent out, as his lordſhip was, to ſhift for himſelf; the reſt muſt be left to Providence.

Confined his living to his condition.

His lordſhip had reaſon, and alſo the good hap, to be ſenſible of his condition, and that it concerned him in the laſt degree to make the beſt of his profeſſion. For his family was not in a poſture to ſuſtain any of the brothers, by eſtates to be carved out of the main ſuſtentation of the honour. It was apparent that his lordſhip was far from a moroſe, or ſo much as a retired diſpoſition; he had ſprightly motives to follow the joys his fancy ſuggeſted, as much as any wit of them all, and was ſenſible of the labour and pains he was to undergo, and ſet himſelf to it as labourers to their work, for a livelihood; and after he had broke himſelf to the ſtudy of the law, ſo as might have rendered it eaſier to him, yet he had his inclinations to divert himſelf, and ramble as perſons of better fortunes did. But, through the ſtrength of his reaſon, he recollected himſelf, and perſevered, and engaged in no entertainments abroad, that were inconſiſtent with his ſtudies. I have heard him ſay more than once, that, if he had been ſure of a hundred pounds a year to live on, he had never been a lawyer.

Attended in the country but ſtudied.

His lordſhip's grandfather took a fancy to have him be with him in the country;

for he loved to hear him talk of news, philoſophy, and paſſages in London. He made him play at back-gammon, and fiddle when ever he thought fit; for which, all he got was ſaving a little charges at the temple, and an annuity of twenty pounds a year; which latter was taken away from him in diſpleaſure, as is related afterwards. But this courſe of life, together with bowling, fiſhing, billiards, park, hunting, viſiting, and ſuch country diverſions, which might have plunged a young man in idleneſs, and reſignation of all endeavours towards a profeſſion, did him no hurt at all; but rather the contrary, for he always had his boxes of books up and down by the carrier; and, in the country, alone by himſelf, read in his courſe, and commonplaced full as much, or perhaps more than he ſhould have done in London. And the only diſadvantage he had there, was want of a ſtudious ſociety; but conſtantly at terms, he got leave to repair to London, and their recruited his diſcontinued friendſhips, which were of vaſt benefit to him, as will be related afterwards.

Uſed commons and puttingcafes.

He uſed conſtantly the commons in the hall at noons and nights, and fell into the way of putting caſes (as they call it) which much improved him; and he was very good at it, being of a ready apprehenſion, a nice diſtinguiſher, and prompt ſpeaker. He uſed to ſay that no man could be a good

lawyer that was not a put-caſe. Reading goes off with ſome cloud, but diſcourſe makes all notions limpid and juſt; for, in ſpeaking, a man is his own auditor (if he had no others at hand) to correct himſelf. Beſides, there are diverſities of opinions, and contentions in reaſoning, which excite thoughts that otherwiſe would never have riſen. And miſtakes, almoſt incredible to the miſtaker, being obſerved, cauſe a recurrence, for ſurety, to the authorities, where an inſpection convinceth, and withal corrects the faulty aſſurance ſome will have in a mere memory.

Of commonplacing in the ſtudy of the law.

It was his lordſhip's conſtant practice to commonplace as he read. He had no bad memory, but was diffident, and would not truſt it. He acquired a very ſmall but legible hand; for, where contracting is the main buſineſs, it is not well to write, as the faſhion now is, uncial or ſemiuncial letters, to look like pigs ribs. His writing in his commonplaces was not by way of index, but epitome; becauſe, as he uſed to ſay, the looking over the common place book on any occaſion, gave him a ſort of ſurvey of what he had read about matters not then inquiſited, which refreſhed them ſomewhat in his memory: and that had not been obtained in a way of mere what and where, as the ſtyle of moſt indexes runs. When this manner of writing is comprehenſive, or pregnant, it is called abridgement, of which

there are diverſe large ones of the common law in print, as Fitzherbert, Brook, &c. and are like thoſe the civilians call ſummiſts, which, with them, are not allowed as authority. Certainly it is an error for a ſtudent to peruſe ſuch; it being like reading over a dictionary, which never teacheth a language. And, for that reaſon, Coke's comment upon Littleton ought not to be read by ſtudents, to whom it is, at leaſt, unprofitable; for it is but a common place, and much more obſcure than the bare text without it. And, to ſay truth, that text needs it not; for it is ſo plain of itſelf that a comment, properly ſo called, doth but obſcure it. In the diſpoſition of the titles, he choſe rather to take many than few, and thereby to become forced (as ſome have done) to make out the reſt by ſub-diviſions; for it is eaſier to conſult with many generals, to which the alphabet leans, than few with many ſubdiviſions; the latter requires an exact ſkill in the method, which, though well underſtood, is often forgot: And therein Mr. Keeble's table to his ſtatute-book is faulty; for if one would look for the title executors, he muſt go to title adminiſtrators, becauſe the author thought fit to make that the general title for all, or moſt, teſtamentary matters. Were it not better to make executors, probate, devaſtavit, &c. titles expreſs? He made diverſe eſſays towards a common place, which did not ſuc-

ceed: but it purchaſed experience, at the expence of ſo much paper, before his method and way of writing was ſettled and obvious to him; and then he made a very good one, ſuch as may be ſtyled an abridgment, which now remains with the Right Honourable the Lord Guilford. He uſed to ſay that no writing, though in a common place, however improper, was of any ill conſequence; for, by making ſearches difficult, the very going to ſeveral titles, for the ſame enquiry, refreſhed the memory of other things: and it was not at all amiſs that common place ſentences, as ſome may touch diverſe matters, ſhould be wrote under as many titles. He uſed to ſay that the advantage of his common place was not, as a parſon's concordance, to help him to caſes, but, when he remembered he had read of a caſe, to help him to find it; and then his little note, there, brought into his mind the agitation of the matter at large in the book; and, for this reaſon, the common place book is of little uſe to any but to him that made it. For the law is inculcated by reading the long arguments to be found in the books, where reaſons are given *pro* and *con*, and not by any extracts, however curiouſly made. And the great art of common placing lying in the judicious, but very contracted, note of the matter, a ſtranger may paſs it by, and not know whether it concerns his enquiry or not.

His admiſſion into the converſation of Mr. attorney-general Palmer (whereof the happy conſequences are noted afterwards) proved of great uſe to him in the direction of his reading. For Mr. Attorney (whoſe good nature and affability was ſuch, that a young gentleman might demand any thing of him that tended to the advancement of his ſtudies; and he would anſwer fully and friendly to it) was a very great book lawyer, and yet never made any common place; which is a rare inſtance, and a ſign of a great and diſtinct memory: but yet not ſo great as ſome have had, who have been ſo full of titles of books and folios that their underſtanding was kept truly under, and they knew nothing elſe. For this reaſon old ſerjeant Waller, was called index; and people went for his opinion, only to bring away a liſt of quotations to aſſiſt other counſel that underſtood better. I doubt not but his lordſhip was encouraged by Mr. Attorney to common place ſo much as he did, whereof the want might be ſenſible to himſelf that had not done ſo, but, too late perhaps, wiſhed he had done it. And the courſe and method of ſtudy, which his lordſhip uſed and recommended to his friends, was derived from the ſame fountain. And of that, as far as I have obſerved from his lordſhip's diſcourſe, was to uſe a variety, and not to plod on in the ſame tract too long.

Mr. Attorney General Palmer's favour.

Choice of books.

There are of law-books inſtitutions of various ſorts, and reports of caſes (now) almoſt innumerable: the latter bear moſt the controverſial law, and are read as authority ſuch as may be quoted: and I may ſay the groſs of law lecture lies in them. But to ſpend weeks and months wholly in them, is like horſes in a ſtring before a loden waggon. They are indeed a careful ſort of reading, and chiefly require common placing, and that makes the work go on ſlowly. His lordſhip therefore uſed to intermix ſome inſtitutionary reading with them, as, after a fulneſs of the reports in a morning, about noon to take a repaſt in Stamford, Crompton, or the Lord Coke's Pleas of the Crown, and Juriſdiction of Courts, Manwood of the Foreſt Law, Fitzherbert's *Natura Brevium;* and alſo to look over ſome of the antiquarian books, as Britton, Bracton, Fleta, Forteſcue, Hengham, the old tenures, *narrationes novæ*, the old *natura brevium*, and the diverſity of courts. Theſe, at times, for change and refreſhment, being books all fit to be known. And thoſe, that, as to authority, are obſoleted, go rounder off-hand, becauſe they require little common placing, and that only as to matter very ſingular and remarkable, and ſuch as the ſtudent fancies he ſhall deſire afterwards to recover. And, beſides all this, the day afforded him room for a little hiſtory, eſpeciallyof England, modern books,

and controverſy in print. But now, as the Engliſh hiſtory, I may add a modern improvement, viz. the two volumes of Dr. Brady's are added to the ſtore, and compiled ſo religiouſly upon the very text, letters and ſyllables of the authorities, eſpecially thoſe upon record, that the work may juſtly paſs for an antiquarian law-book. In this manner he ordered his own ſtudies but with excurſions into humanity and arts, beyond what may be ſuitable to the genius of every young ſtudent in the law.

Employment of diſcourſe.

And he was moſt ſenſible of the benefit of diſcourſe, which I mentioned before; for I have obſerved him often ſay that, after his day's reading (as in London if he had the opportunity) at his night's congreſs with his friends, either at commons or over a chop, whatever the ſubject was, he made it the ſubject of his diſcourſe in the company; for, ſaid he, I read many things which I am ſenſible I forgot, but I found withal that, if I had once talked over what I had read, I never forgot that. This agrees with a direction to a ſtudent, ſaid to have come from the Earl of Nottingham, *that he ſhould ſtudy all the morning, and talk all the afternoon;* becauſe a ready ſpeech, (if it be not nature's gift,) is acquirable only by practice, and is very neceſſary for a bar practiſer. I remember that, after the fire of the Temple, it was conſidered whether the old cloiſter walks ſhould be rebuilt, or rather

improved into chambers; which latter had been for the benefit of the Middle temple. But in regard it could not be done without the conſent of the inner houſe, the maſters of the middle houſe waited upon the then Mr. Attorney Finch, to deſire the concurrence of his ſociety, upon a propoſition of ſome benefit to be thrown in on that ſide. But Mr. Attorney would by no means give way to it, and reproved the middle templers very wittily and eloquently upon the ſubject of ſtudents walking in evenings there, and put in caſes, which, he ſaid, *was done in his time, as mean and low as the buildings were then, however it comes,* ſaid he, *that ſuch a benefit to ſtudents is now made ſo little account of.* And thereupon the cloyſters, by the order and diſpoſition of Sir Chriſtopher Wren, were built as they now ſtand. And, agreeable to this, Serjeant Maynard, the beſt old book lawyer of his time uſed to ſay that the law was *ars bablativa*, which humourſomely enough declares the advantage that diſcourſing brings to the ſtudents of the law. And certainly, above all things, the art of prompt ſpeaking is to be cultivated, as far as may be, according to the apteſt rules of oratory, becauſe it wonderfully ſets off a bar-practiſer. And many by that very talent uncultivated, and owing to pure nature, have ſucceeded beyond others much more learned. He had ſuch a reliſh of the old year books, that

he carried one in his coach to divert his time in travel, and ſaid he choſe it before any comedy. A true notion of the uſe of any thing, however out of the road of common approbation, will adminiſter ſuch a ſuperlative taſte.

I do not know that his Lordſhip had read over, in courſe, all the year books; but I verily believe he had diſpatched the greateſt part, and that he began with the book termed Hen. VII. which hath ſome years in the antecedent reigns. That book he uſed to ſay was the moſt uſeful, or rather neceſſary for a ſtudent to take early into his hand, and go through with, becauſe he had obſerved much of the common law, which had fluctuated before, received a ſettlement in that time, and from thence, as from a copious fountain, it hath been derived, through other authors, to us, and now is in the ſtate of common erudition, or maxims of the law. He thought a lawyer could not be well grounded without a knowledge of theſe ancient reports: for they were compiled by men ſolemnly authoriſed, and not as now, when every ordinary practiſer (to ſay nothing of the late judges; and even their reports have been moſt taken when they were practiſers) publiſheth his reports as he pleaſeth; and the bookſeller procuring an imprimatur, there is no more to be ſaid. And thus the ſhelves are loaded with reports; all which to read, much more to

Uſe of the year-books.

commonplace, is, not only labour but, hardly poſſible to be done. And how erroneous and contradictory, not only to other books, and even in the ſame caſes, but alſo to themſelves, in many inſtances, are moſt of them? And what ſtudent or lawyer ever pretended (ingenuouſly) to know what was in them all? Or what queſtion can happen that may not be very plauſibly argued *pro* and *con* out of them? Or what arguers, on either ſide, can now want a caſe in point (as they value themſelves) to conclude with?

Ancient method of pleading.

Thus it is become almoſt neceſſary to make a pandect of law, by eſtabliſhing the authority of ſingle points that are clear, ſuppreſſing all the reſt; and thereby purge out all inconſiſtencies, contradictions, and dubitations; which being once done, the law learning may have more credit, and not be called ſoft wax. But, to return to the year books, it is obvious what deference ought to be had to them, more than to the modern reports; for, paſſing by the very ſhort and material rendering the ſenſe of the pleaders and of the court, it muſt be obſerved that the whole cauſe, as well the ſpecial pleadings as the debates of the law thereupon, was tranſacted orally at the bar, and the prothonotaries, *ex officio*, afterwards made up the records in Latin. And the Court often condeſcended to diſcourſe with the ſerjeants about the diſcretion of their pleas, and the conſequenſes, with reſpect to their clients. And the

court did all they could to prevent errors and overſights. And reaſon good; for elſe their records muſt go up to the King's Bench to be canvaſſed for error, which they did not deſire ſhould be. And theſe tranſactions, faithfully reported, was anciently a code of the common law, which the courts deferred very much to, and the practiſers had by heart. But, now, the pleadings are all delated in paper, and ſo paſs the offices, and the court knows nothing of much the greater part of the buſineſs that paſſeth through it: and when cauſes, which they call real, come on, and require counting, and pleading at the bar, it is done for form, and unintelligibly; and, whatever the ſerjeant mumbles, it is the paper book that is the text: and the court as little meddles with, as minds, what is done of that ſort at the bar; but the queſtions, that ariſe, are conſidered upon the paper book. All the reſt of the buſineſs of the court is wrangling about proceſs and amendments, whereof the latter had been moſtly prevented, if the court (as formerly) had conſidered the firſt acts of the cauſe at the bar, when offered by the ſerjeants. And this way alſo the ſkill of pleading lies not in a ſtudent's notice, for him to gather up together with the law part of the caſe; but he muſt read over records and entries, a diſcipline that would ſplit a briſk gentleman, by making a jade of his patience. And really forms are bet-

ter underſtood and learned by writing than by reading; for that exerciſe allows time: which conſideration hath made clerkſhip ſo recommendable to beginners, that moſt enter the profeſſion of the law that way. It was not moroſeneſs, but reaſon, that inclined his lordſhip to deal ſo much as he did with the year books; and however, at preſent, that ſort of reading is obſolete and deſpiſed, I gueſs there will not be found a truly learned, judicious common lawyer without it.

Attendance on the courts.

After a good foundation out of books, his lordſhip, together with his farther ſtudies, joined an attendance on the courts of juſtice. For an obſervation of the practice, gave a great life and ſpirit to what had been gained by reading. His deſign, with the community of his profeſſion, was to enter his claim to buſineſs at the King's Bench bar, which inclined him to make his preparatory attendance there; but yet he thought fit, as he had been alſo adviſed, to attend, as a ſtudent, moſt at the Common Pleas: For there all ſuits are drawn forth upon the ancient and genuine proceſs of the common law; and, as the Lord Nottingham, in one of his ſpeeches, expreſſeth, the law is there at home. The time of that court is not taken up with factious contentions, as at the King's Bench, where more news than law is ſtirring. And his lordſhip, wherever he was in the way

of learning any thing, never failed to have his note book, pen and ink ready: and in that he wrote as a reporter, and afterwards, generally that very day, he poſted his gatherings into a fair book; for then he could ſupply, out of his memory, what was imperfectly taken, and recover things that had not been noted, and diſpoſe all into ſome tolerable order: for a young reporter's note book is ſo diſorderly wrote, or rather ſcratched, that none but himſelf, nor he, after a few days, can make any thing of it.

Reports of caſes and law French.

I do not find that he had opinion enough of his early reports, taken while he was a ſtudent, to preſerve them either fair or foul; for none ſuch are come to my hand. But juſt upon his coming to the bar, he attended at the Common Pleas whilſt Hales was a judge there. And ſome caſes are found at the beginning of his reports, taken there. And I perceive by that book, that one year's reports to Hil. 1657-8, are of the Common Pleas, and from thence they run all as of the King's Bench. By this time he found his ſtrength at that exerciſe, and began to be very careful of his reports. He was alſo an attendant (as well as exerciſer, at the ordinary moots in the Middle temple and at New Inn; whereof the former is the ſuperior, and governs the exerciſes, and took notes. In thoſe days the moots were carefully performed, and

it is hard to give a good reaſon (bad ones are prompt enough) why they are not ſo now. And he contrived to ſtay in London to be preſent at famous pleadings, as particularly that of Sir Heneage Finch, and ſome others. The ready uſe of the law French came eaſily to him, becauſe he well underſtood the vernacular; and he had acquired ſuch a dexterity in writing it with the ordinary abbreviations, that he ſeldom wrote haſtily in any other dialect: for, to ſay truth, barbarous as it is thought to be, it is conciſe, aptly abbreviated, and ſignificative. And I believe his aptneſs, when in haſte, or writing to himſelf only, to write in law French, proceeded from his long uſe and practice of noting at the bar; which had created in him both an eaſe and a dexterity in it. When he had time and place to write at his eaſe, he uſually wrote Engliſh, and accordingly drew up his reports.

Applied to court-keeping.

His lordſhip, long before he was called to the bar, undertook the practice of court keeping. His grandfather thought he preferred him mainly, when he made him ſteward of his courts. And the young lawyer procured of other neighbours and relations, to have the charge of their manors; and ſo made the employment conſiderable to him. He did not, as many others of late, take a ſhare of the profits, and make ſome attorney a kind of ſubſtitute to do

all the buſineſs; but kept all his courts himſelf, and wrote all his court rolls, and made out his copies with his own hands; for he pretended to no clerk then. His grandfather had a venerable old ſteward, careful by nature, and faithful to his lord, employing all his thoughts and time to manage for ſupply of his houſe, and upholding his rents: in ſhort, one of a race of human kind, heretofore frequent, but now utterly extinct; and there is ſcarce any of the breed left, that is, affectionate as well as faithful, and diligent for love rather than for ſelf-intereſt. This old gentleman, with his boot-hoſe and beard, uſed to accompany his young maſter to his court-keeping; and obſerving him reaſon the country people out of their pence for eſſoines, &c. he commended him, ſaying, *if he could be contented to be a great while getting a little, he would be a little while getting a great deal,* wherein he was no falſe prophet. I have heard his lordſhip ſay, he thought this court-keeping buſineſs (which he uſed to recommend to others) did him a great deal of ſervice; for it ſhewed him the humours of the country people, and accuſtomed him to talk readily with them, and to meet with their ſubtilties. They ſeldom came forward without ſome formed ſtratagem to be too hard for Mr. Steward. Some would inſiſt to know their fine, which he would not tell till they were admitted,

and then he inſiſted for his fees; no, they would know the fine, and ſome cunning fellow would jog and adviſe them to pay the fees, and not diſpute that. And abundance more of their contrivances he uſed to ſpeak of.

Copyhold and infancy.

He was moſt put to it in caſes of infancy, and uſes declared in deeds that did not appear. As for the former, if none came for the infant to be admitted, he ſeiſed, not as for a forfeiture, but *quouſque*, &c. and made a warrant to the bailiff, *quod reſpondeat domino de proficuis:* which did not, as he ſaid, make the lord accountable, who in that reſpect had a prerogative, as upon a reverſal of an outlawry, no money goes out of the king's coffers; but if any friend would pay the fine, he admitted the infant, and him guardian. As to latent uſes, which often happen in wills (and ſometimes referring to deeds of ſettlement,) for long terms of years, he would not admit at all, and no action lay becauſe he had the lord's order: For though he might fine to the value, it did not anſwer, becauſe at that rate, men might enfranchiſe the copyhold, in ſpite of the lord's teeth. He hath ſaid that the greateſt trouble he had in thoſe affairs, was to ſatisfy ſome greedy lords, or rather ladies of manors, in ſetting the fines, and in being, in ſome meaſure, an executioner of their cruelty upon poor men. And in very good earneſt, it

is a miſerable thing to obſerve how ſharpers, that now are commonly court-keepers pinch the poor copyholders in their fees. Small tenements and pieces of land, that have been mens inheritances for diverſe generations, to ſay nothing of the fines, are devoured by fees. So that, if it were only to relieve the pooreſt of the land owners of the nation from ſuch extortions and oppreſſions, without more, there is reaſon enough to aboliſh the tenure. It was ſomewhat unequal, when the parliament took away the royal tenures *in capite*, that the leſſer tenures of the gentry were left expoſed to as grievous abuſes as the former. The ſtate of that matter ſeems now at the worſt, for copyhold tenures continually waſte, and cannot be renewed or encreaſed, ſo that moſt manors are more than half loſt. Either aboliſh all baſe tenures, or let gentlemen enlarge them as they pleaſe; and that perhaps may tend to ſome repopulation, which is more needed than any means of extortion.

Managed ſome law-ſuits.

His lordſhip, while he was a ſtudent, and during his incapacity to practiſe above-board, was contented to underpull, as they call it, and managed diverſe ſuits for his country friends and relations, which he ſaid was uſeful to him in letting him into a knowledge of the offices, and the methods uſed there: for he was always in perſon preſent at every turn in whatever buſineſs

he undertook. In a cauſe for his father againſt Sir John Lawrence, he recovered 3col. and brought in a very moderate bill of charges; which pleaſed his father who expected a great deal more. He made uſe of Mr. Baker, a ſolicitor in Chancery, who for his ſingular integrity was famous, and on this occaſion ought to be remembered with honour. His lordſhip had a veneration for this Mr. Baker as long as he lived. When his lordſhip paid his bill, the virtuous ſolicitor laid by a ſum (according to an uſual rate) for him, ſaying that it was their way, and they were allowed at the offices ſomewhat for encouragement to them that brought buſineſs. By this we ſee what country and other attornies get by chancery ſuits. But his lordſhip would not touch a penny, but turned it back upon the good man's hands.

The like for his grandfather, and his vindication.

He alſo managed a ſuit for his grandfather with the like ſucceſs, and in the cloſe of that, ſomewhat comical happening, I am provoked to relate it. And indeed what have we to remember of a young man, but things that really fell out, and in his circumſtances, not inconſiderable? After this ſuit ended, his lordſhip ſent to his grandfather the bitter pill, the ſolicitor's bill of coſts, and the old man ſent him the money, and he paid it. And afterwards the noble client reviewed his bill over and over, for however moderately and huſbandly

the cauſe was managed, he thought the ſum total a great deal too much for the lawyers. And among other items, he obſerved great numbers of ſheets in the bill, and ſo for the anſwer and depoſitions, beſides many breviates, orders, &c. as belong to a chancery caſe. And he had heard in the country of ſuch bills whereof no entry at all was in the offices (no miracle in our days) and then knowing Frank North to be a nimble ſpark, he concluded that theſe items were ſuppoſitions, and that he had ſwallowed the money, and after the way of wilful people, upon a bare ſuſpicion, concluding a certainty, he deliberated how to catch him (as it were) in the fact, and then to expoſe him to perpetual ſhame and ruin. And purſuant to this pious reſolution, he writes to Mr. Langhorn of the Temple, (who afterwards ſuffered in Oates's plot) to cauſe ſearches to be made, and to ſend him word if any ſuch proceedings, of which he gave him the account, were entered in the offices. Whether it was by gueſs, perfunctory ſearches, or the perſon employed took the money and cheated the offices, I know not; but it is certain that Langhorn returned anſwer, *that no ſuch proceedings were to be found upon the file in any of the offices where they ſhould have been entered, or any copies of ſuch made out.* This was nuts to the old lord, who thought he had outwitted Frank; and, while he was in Lon-

don, uſed to talk very myſteriouſly of him; as that *Frank had wit enough, but this honeſty, honeſty, was a rare thing.* The meaning of all which, the family about him did not in the leaſt apprehend. When Frank was about to come down, the old man wrote to him to bring with him the papers that belonged to his caſe. And ſo it reſted till the young man arrived; and then, for about a week, all was well; in which time, all the news and London matters were talked over and diſpatched. And then, after dinner, the old lord turned to Frank, and *Where are the papers?* ſaid he. The other anſwered, *he would go fetch them.* This did not work well, but ſtill the event was expected; and after a little pauſe, Frank returned with a bale of papers under his arm, and ſet it down upon the table, ſtanding by it in expectation of what would be ſaid to him. The old Lord, being utterly fruſtrated in his expectations, turned about the room quicker than ordinary; and as he mended his pace, Frank was in great doubt what was to become of him. At laſt he ventured to ſay, *My lord, what is your pleaſure I ſhall do with theſe papers?* The old lord ſtopt ſhort, and turning, ſaid, *wipe your a—e with them.* That anſwer was not at all expected; and, after a little pauſe, he aſked again *what he ſhould do with them?* And his lordſhip ſtopt ſhort again, and, twice as loud as before, ſaid he, *why, don't I tell ye? wipe your a—e with them.* And

there ended all his concern about thoſe papers; and Frank was reſtored to favour.

This hiſtoriette manifeſts the little ſafety there is in falſe dealing, as much as the loftier accounts of hazards, or decadences of great miniſters of the court: for if this young lawyer, for want of experience, or (we muſt ſay) of honeſty, had dabbled in a very common practice, of ſhamming a falſe bill, he had been caught and undone. And on the other ſide, being faithful and juſt, with the teſtimony of things to diſculpate him, what a triumph had he over a ſevere old man, that had rejoiced to have expoſed him? And how ſtrongly is the conſequence of a very trite maxim (in mouths, but rare in hearts) verified by this inſtance, that honeſty is the beſt policy? And there is this farther leſſon, in it, that young men, in making their fortunes, muſt depend, and are obliged to bear with humours and injuſtices from thoſe they depend on: And, in that ſchool of the world, they learn to be reaſonable and juſt themſelves; for few men ever value reaſon and juſtice, till they have ſharply felt, and ſo have been made ſenſible of the contrary.

Concerned in a family revolution to his loſs.

There was an emergence in the family of his lordſhip's grandfather, which, as to the economy of it, was of the laſt importance: and in regard it drew in his lordſhip to be the chief actor in the ſcene,

and, as things then ſtood, a bold undertaker, and ſhews him ſo early thought fit to be employed and entruſted in nice performances, I ſhall give a relation of it. The old lord, beſides his reverend ſteward mentioned before, had two other ſervants of a French race, who were his favourites. One was called Bertram St. Genes, that had ſcarce Engliſh enough to make himſelf underſtood; but a groſs ſycophant, and (if honeſt) moſt unfit for buſineſs. He had married the other's ſiſter, and had children, for whom a habitation was prepared near hand. He was a very little fellow, and ſerved as a *valet de chambre*, and had thereby means to inſinuate to the prejudice of the reſt of the family. But the other, Monſieur le Blanc, in Engliſh (as he was called) White, was a briſk, gay ſpark, that had been bred at court (ſuch as it was) a page to Sir John Danvers, one of the king's judges. He could dance, ſing, and play very neatly on the violin, was good company, and ſerved as a gentleman waiter, and was moſt acceptable in his muſical capacity. It fell out, very unluckily for the family, that the old lord quarelled with his good ſteward; and, as his humour was to be very tyrannical and vindicative, ſo he had taken a reſolution never to be in the wrong. And he cared not whom he perſecuted, nor how unjuſtly or unreaſonably, if it tended, as he thought, to juſtify any thing he had

done: and the more miſtaken he found himſelf, the more violent was he in his proceedings; as if, by that means, he was to ſet himſelf right. Theſe are the dregs of an old courtier. But ſurely he tormented the poor old man by revilings, and law ſuits, and at laſt broke his heart; and he died. But, upon the firſt turning him off, there was a place fallen, no leſs than the premier miniſter in that family; and the queſtion came, who ſhould ſucceed him; Sir Dudley North, his lordſhip's father, was really afflicted at the hard uſage of the old ſteward; and more at the ruin he foreſaw would follow, if that raſcally monſieur, who was worſe than good for nothing, was made ſteward. There never was an inſtance of filial duty to a parent more eminent than that of Sir Dudley North to his father. He lived to a good old age before the barony deſcended upon him, and had ſtood as an eldeſt ſon of a peer, at the ſtate in the houſe of lords, at ſixty-three. He never would put on his hat, or ſit down before his father, unleſs enjoined to do it. So far was he from moving any thing to him that he knew would diſpleaſe him; and ſo egregious was this dutiful demeanour, that all people took notice of and admired it. And ſome were ſo aſſured to ſay, that Sir Dudley had his reward in living to ſee all his own children, who were not a few, male and female, both dutiful to him, and ſettled proſperouſly,

according to their ſeveral pretenſions, in the world. But Sir Dudley, dreading the advancement of this Bertram, encouraged his ſon Frank, who ſeemed a favourite alſo, to repreſent to the old lord the unfitneſs of that fellow to be his ſteward; and he accordingly ventured to ſay, *he hoped his lordſhip did not intend to make choice of him. Why ſo,* ſaid the old Lord. *What can you charge* Bertram *with?* He anſwered, *that for many years he had the charge of his wine and ſtrong beer cellar, and never gave his lordſhip an account of that, or any thing he was entruſted with.* This was but too true, and could not be denied. Then the old man rearing himſelf a little, *Who then,* ſaid he, *would you have to be ſteward?* He anſwered, Mr. White. And that was worſe, and worſe, becauſe he was a favourite alſo; and Frank North's deſignation of him, in that manner, could not fairly be quarrelled with. Whereupon the old lord roſe up, and lapping his cloak about, as he uſed when angry, without ſaying more, went out, leaving the young man in great ſuſpence, not knowing what was to become of him. The old lord went to his cabinet, and took out a codicil he had made to his will, and carried it to his ſon Dudley; and, *look here, ſon,* ſaid he, *I had given Frank twenty pounds a year, but he has offended me, and here is his reward;* ſo threw it into the fire: And, from that time, contrived all the ways he could to defame and

ruin him. Sir Dudley repaired his ſon Frank by a leaſe of a houſe in London, and encouraged him by his approval of his fidelity and courage. But the old man ſtill made uſe of Frank for his diverſion; and, teeth outwards, was kind to him: but he muſt ſometimes bear a gird or two upon account of the ſteward, which, at laſt, proved to be the Monſieur. But he lived not long enough to do much miſchief; for a government, long kept in good order, will not be put out all at once. And, after Frank (at his next term) was gone to London, the old lord made a ſervant write to him, and at the bottom were theſe words: *In conſilium ne acceſſeris antequam voceris;* that is, do not offer your advice before it is aſked. The reaſon of which was, that the bitterneſs of his repentance might not wear off. This was the laſt tranſaction, in that family, which much concerned his lordſhip: and, if theſe relations are thought of ſmall import; to mend that fault, I can add only, that they concern my ſubject, and are true: and, from a private family, let the imagination transfer the ſcene to ſome royal and imperial court, changing the names of perſons and offices, and the whole may be ſeen ſprout up into the altitude of ſtate intrigues.

I have ſo far conducted his lordſhip, as to be ready for the bar. But before I touch upon that, I ſhall take ſome notice of his Character.

character, as the ſame appeared in this firſt ſtage of his life. He was of a low ſtature, but had an amiable ingenuous aſpect, and his converſation was anſwerable, being ever agreeable to his company. His hair grew to a conſiderable length, but was hard and ſtiff, and did not fall as the reſt of the family, which made it buſh ſomewhat, and not without a mixture of red and grey. As to his humour, he was free from vanity himſelf, and hated it in others. His youthful habits were never gay, or topping the mode, like other inns of court gentlemen, but always plain and clean, and ſhewed ſomewhat of firmneſs or ſolidity beyond his age. His deſire was rather not to be ſeen at all, than to be marked by his dreſs. In thoſe things, to the extreme was his aim; that is, not to be cenſured for a careleſs ſloven, rather than to be commended for being well dreſſed. But, as to his appearing in publick, the compoſition of his temper was extraordinary; for he had wit, learning and elocution, and knew it, and was not ſenſible of any notable failings, whereof to accuſe himſelf; and yet was modeſt even to a weakneſs. I believe a more ſhamefaced creature than he was, never came into the world: he could ſcarce bear the being ſeen in any public places. I have heard him ſay, that, when he was a ſtudent, and ate in the Temple hall, if he ſaw any company there, he could not walk in till other company came;

behind whom, as he entered, he might be ſhaded from the view of the reſt. And he uſed to ſtand dodging at the ſcreen, till ſuch opportunity arrived; for it was death to him to walk up alone in open view. This native modeſty was a good guard againſt vice, which is not deſperately purſued by young men, without a ſort of boldneſs and effrontery in their natures. Therefore ladies, and other fond people, are greatly miſtaken, when they deſire that boys ſhould have the garb of men, and uſurp aſſurance in the province of ſhamefacedneſs. Baſhfulneſs in the one, hath the effect of judgment in the other. And where judgment, as in youth, is commonly wanted, if there be not modeſty, what guard has poor nature againſt the incentives of vice? Therefore it is an happy diſpoſition; for when baſhfulneſs wears off, judgment comes on: and, by judgment, I mean a real experience of things that enables a man to chuſe for himſelf, and in ſo doing, to determine wiſely.

His looſe entertainments, in this ſtage, were, as uſual with gentlemen cadets of noble families in the country, ſporting on horſeback; for which there was opportunity enough at his grandfather's houſe, where was a very large and well-ſtocked deer park; and, at leaſt twice a week in the ſeaſon, there was killing of deer. The method then was for the keeper, with a large croſs bow and arrow, to wound the deer, and

His diverſions.

two or three diſciplined park hounds purſued till he dropped. There was moſt of the country ſports uſed there for diverting a large family, as ſetting, courſing, bowling; and he was in it all; and, within doors, back-gammon and cards with his fraternity and others: wherein his parts did not fail him, for he was an expert gameſter. He uſed to pleaſe himſelf with raillery, as he found any that, by minority of age, or majority of folly and ſelf-conceit, were expoſed to be ſo practiſed upon. I could give inſtances enough of this ſort, and not unpleaſant, if ſuch trifles were to be indulged in a deſign ſuch as mine is. His moſt ſolemn entertainment was muſick, in which he was not only maſter, but Doctor. This for the country; where, to make good his exhibition, he was contented (though, in truth, forced) to paſs the greater part of his time. But, in town, he had his ſelect of friends and acquaintance; and with them he paſſed his time merrily and profitably, for he was as briſk at every diverſion as the beſt. Even after his purſe flowed ſufficiently, a petit ſupper and a bottle always pleaſed him. But he fell into no courſe of exceſs or vice; and whenever he was a little overtaken, it was a warning to him to take better care afterwards: and, againſt women, his modeſty was an effectual guard; though he was as much inclined as any man, which made him deſirous to marry. And that

made his continence a poſitive virtue; for who may not be good, that is not inclined to evil? The virtue of goodneſs is where a contrary inclination is ſtrove with, and conquered. He was in town, a noted hunter of muſick meetings; and very often, the fancy prevailed to go about town and ſee trades work; which is a very diverting and inſtructive entertainment. There was not any thing extraordinary which he did not, if he might, viſit, for his information as well as diverſion; as engines, ſhews, lectures, and even ſo low as to hear Hugh Peters preach. I have heard him ſay, that when Hugh had made his cloſe, he told his congregation that a gifted brother had a deſire to hold forth; and then up roſe Sir Peter Pet: and he, though a mere laymen, prayed and preached his turn out. That gentleman lived to be an old man in town; and moſt people knew him, that little thought he had been once a preacher. The old Lord and Lady Angleſey (while ſhe lived) ſupported him; and, at the revolution, Sir Peter and his lordſhip publiſhed books, wherein one of the chief performances lay in the commending each other: which notable band of friendſhip had its root in the time of the Iriſh rebellion.

Called to the bar without favour.

Now, being to leave his lordſhip in this ſtage, inveſted with a title, and beginning to practiſe the law, I muſt obſerve his preparatives. He was not called to the bar *ex*

gratia, or for favour, as when the perſon is not of ſtanding, or hath not performed his exerciſes: but being early admitted, his time was fully run out, and he performed all his moots both in the inns of chancery (for it is the cuſtom for the inns of court to ſend down readers, to moot, in the inns dependent on them) and alſo in the hall; and not perfunctorily, as of latter times the uſe is, by way of *opus operatum*, as for tale and not for weight, but in well-ſtudied arguments, wherein he followed the example, it may be the inſtruction, of his friend and patron Sir Jeofry Palmer, whoſe moots are excellent readings, as the original manuſcripts, reſting in my cuſtody, may ſhew: and I have alſo ſome like teſtimonies of his lordſhip's endeavours that ſame way. I have heard him ſay that it is prudent not over ſoon to launch into practice; for it is obſerved that no perſon encreaſeth his ſtore of law after he is called to the bar and enters upon practice. His judgment and knowledge of forms may increaſe, but his book learning is at a ſtay, becauſe buſineſs, either found, or purſued, fills his head; ſo that even reading doth him little good. Wherefore it is ſaid that he, who is not a good lawyer before he comes to the bar, will never be a good one after it. After he was called to the bar (which, as they term it, was *ex debito juſtitiæ*) he did not, as many leſs qualified have done, buſtle about town, and obtrude

themſelves upon attornies, and perhaps bargain for buſineſs; but lay quiet: and the chief alteration in his way of appearing, was this. Inſtead of his being poſted within the court, as a ſtudent to take notes, he did the ſame ſtanding at the bar; and if chance, or a friend, brought a motion, of courſe it was welcome.

Exhibition of ſixty pounds per ann. reduced to fifty.

The exhibition allowed his lordſhip by his father, was, at firſt, ſixty pounds per annum. But the family being hard pinched, for ſupplies, towards educating and diſpoſing many younger children, and his parents obſerving him to pick up ſome pence by court-keeping, beſides an allowance of twenty pounds per annum from his grandfather, and a little by practice, they thought fit to reduce him to fifty pounds. This ſat hard upon his ſpirits, and produced diverſe notable-penned letters, poſt after poſt, complaining upon all the topicks of an hard caſe, that could be thought of. He never pleaded ſo earneſtly for the beſt fee that ever he had. At length there comes a letter from his father, which he opened with precipitous haſte, in hopes of a favourable anſwer; and there he found——*Frank, I ſuppoſe by this time, having vented all your diſcontent, you are ſatisfied with what I have done*, &c. There ſunk all his hopes upon that point. But, to do right to his good father, he paid him that fifty pounds a year, as long as he lived, ſaying he would not

diſcourage induſtry by rewarding it, when ſucceſsful, with loſs.

Aſſiſted in carrying a cauſe for one Stutvile.

One of his lordſhip's firſt clients, and for whom he had a great reſpect, becauſe he had the office of keeping his courts early, was Mr. Stutvile of Dalham near New-market. This gentleman was a compound of irregularity, and one of his feats had like to have coſt him dear; for he was taken napping with the wife of one Robinſon: on which, death, without honourable ſatisfaction was to follow. The giving the low ſatisfaction, that is money, was the milder doſe of the two; and that muſt be a peremptory bond for the payment of fifteen hundred pounds, on which condition the bond was to be void. This bond was made by a ſcrivener, and very well; though at the cloſe of the condition, the words——*elſe to remain in full force*, were not added. After the ſealing, Mr. Robinſon brought his bond to the ſcrivener, and ſwore to be the death of him if he did not mend it, by adding thoſe words. *Here is a condition*, ſaid he, *to make the bond void, but none to make it good. It is good*, ſaid the ſcrivener, *if there be no words to avoid it, and I may ſpoil, but cannot mend the bond.* That was all one, he muſt do it, and did it. And then the ſcrivener honeſtly told the obliger, what he had been forced to; ſo that was laid up for a plea to avoid the bond. But Mr. Robinſon, adviſing with counſel about ſuing, was told

his bond was utterly voided by his adding words to the condition after ſealing. Then he was adviſed not to put it to ſuit till the ſcrivener was dead. His lordſhip, and other of Mr. Stutvile's counſel, perceiving that, contrived to bring the point ſoon to a trial, by preferring an information, in the King's Bench, againſt Robinſon for forgery; and if, upon the ſcrivener's teſtimony, he ſhould be convict, that record would remain againſt the bond for ever. Robinſon, finding himſelf caught, and no remedy, complied by delivering up the bond, and ſo got rid of the information. But this unexpected ſucceſs made ſuch an impreſſion on Stutvile's wild brains, that he thought there could be no law-ſuit deſperate; and, from that time, he never did any man juſtice, but ruined himſelf by perverſe law-ſuits, and at laſt died in a gaol. Perhaps, if he had paid the fifteen hundred pounds, his puniſhment had been leſs.

Provides a chamber for practice, and books.

After his lordſhip was called to the bar, the firſt thing he took care for, was a practiſing chamber, as they call thoſe which are not above two pair of ſtairs high. The ground-chamber is not ſo well eſteemed as one pair of ſtairs, but yet better than two; and the price is accordingly. He ſold his little ſtudent's chamber, and alſo the leaſe of a houſe his father gave him, which raiſed near three hundred pounds; and, with that ſum, he bought his life in a corner

chamber, one pair of ſtairs in Elme's court. A diſmal hole for the price; for it was not only dark next the court, but, on the back-ſide, an high building of the inner temple ſtood within five or ſix yards of his windows; But yet, ſome more room, and a large ſtudy being gained, he thought himſelf greatly preferred: and he ſoon filled his ſhelves with all the uſeful books of the law which he wanted. His mother had made a collection of legacies and gifts to him, when very young; and, when he firſt went to the inns of court, ſhe gave him an exact account, to the time, caſt up with the intereſt, and paid him the ſum total at once; and, with that ſtock, he made out a good ſtudent's library.

Aſſiſted a brother at parting.

About this time, his brother Dudley, who had lived in London diverſe years, in the ſeveral ſtates of preparation for trading as a Turkey merchant, was ſent abroad, by his maſter, in a long round-about voyage, by Archangel in Ruſſia, to Smyrna; an account of which voyage will be found in the relation of that gentleman's life. He had, at his going out, from his father, but a ſingle hundred pound ſtock to trade with; and his lordſhip augmented it by lending him two hundred pounds, which was all the wealth he could value himſelf upon, before hand; and of that, by the voyage and mortality, he run no ſmall riſque. This was a melancholy parting; for they had been bred, and much

converſant together, and, fraternal relation apart, were joined in the ſtricteſt perſonal friendſhip: and now, when they were arrived to a ſtate of enjoying each other in perfection, worldly engagements obliged them to ſeparate. But this kindneſs of his lordſhip's was rewarded, by living to ſee his brother come home wealthy, and, ſoon after, flouriſhing, not only in the city but alſo at court in the king's ſervice.

Correſponded, and about one Broadgate.

Theſe two brothers and friends held a continual correſpondence by letters; but more frequent and expatiated at firſt than afterwards, when buſineſs encreaſed ſo much upon both as abated the ardour of writing often and long. It fell out that when Mr. Dudley North firſt arrived at Smyrna, or ſoon after, the factory was ſerved by one Broadgate, as their chaplain, ſent out, for that end, by the Turkey Company. He had been a fellow of St. John's college in Cambridge, and preferred to a living in Eſſex, where the gentleman, there reſiding, was ſo offended at his unfitneſs and ill carriage, that, to get rid of him, he made an intereſt, and paumed him upon the Turkey Company, and ſo he came to be ſent to Smyrna. The young factors are commonly generous fellows, and ſtand much upon honour (in thoſe parts at leaſt, whatever they prove when they come home) they revere and gratify their pappas, as, they call him, if he behave himſelf well, but, if otherwiſe, they lead him a life as they

ſay) like a dog. This perſon was a preſbyterian bigot, and not without a flaw in his cranium. And he made account that he was to preſide over boys, and to teach them religion: and, to that end, had framed a catechiſm, and got it printed; and a bale of theſe, ſtitched in blue paper, went along with him, and were delivered out to all the factory; and he took particular notice of Mr. Dudley North, telling him that his brother Francis was his fellow collegiate and intimate friend, and, for his ſake, he would be very kind to him. But the parſon was guilty of ſo many barbarous impertinences (as may be found particulariſed in that gentleman's life) that the young factor wrote to his brother Francis, telling the various extravagances and follies committed by him there, and deſiring to have an account of him and his character. His lordſhip ſoon wrote, and informed him that Broadgate was the laughing-ſtock of the college; and ſo made good payment in ſtories of him here. This letter was communicated about in the factory, and the parſon underſtood how he came to be ſo derided as he was. Upon that, he goes to Mr. Dudley North, and deſired to have his brother's letter, that he might ſue him in England for taking away his reputation. The merchant would not do that; but told the parſon, that, if he had it, it would do him no ſervice, for he would prove that he had no reputation

before the letter came, ſo could loſe none by that: and then, turning over his copy-book of letters, he read to him his leading letter to his brother, in which were all the ſtories and terms of deriſion as could be, to make him contemptible. This was plain enough to the parſon; and it was all he got by his attempt. This was one of thoſe notable men that obliged the little fellow-commoner of St. John's college with opportunities of making ridiculous remarks. As, for inſtance, that he ſpent his time watching at his window; and if he ſaw ſtrangers in the court, then he made his clock ſtrike, that it might be plain to them that a clock ſtruck in his chamber. And, if many ſcholars were in the court, he went down on purpoſe to make them cap him. And the book, that lay on his table, had broad pieces in the leaves, which viſitants, opening, might diſcover; and other ſuch kind of vain follies, whereof the early obſervation might poſſibly help to make his Lordſhip nauſeate all kind of vanity, as he did for ever after.

Endearment with his brother Dr. John North.

The loſs of this good brother was, in ſome meaſure, repaired by the frequent enjoyment of another, John North, who had alſo, for ſome years, been bred with him; but, being ſettled in another way of ſtudy in the univerſity of Cambridge, they came not often together, but at friends houſes in times of receſs, and, ſometimes, by recourſe of the ſcholar to London. And their en-

dearments encreaſed continually, ending in a perfect and untainted love and friendſhip to each other: of which more may be ſaid in the life of this brother John, afterwards Dr. North.

Solicitous about his health.

About this time his lordſhip, notwithſtanding his being called to the bar, followed his ſtudies very cloſe, and attended the courts at Weſtminſter, and reported diligently; and if there were any famed cauſe to be argued and determined, in what court ſoever it was, he would be a preſent auditor and reporter of it; eſpecially before Hales while he ſat in the common pleas. And, obliging himſelf to that ſpider-kind of life which a young lawyer leads in his chamber, he began to contract certain ſplenetic reflections touching his health, always thinking ſome fever, conſumption, or other diſeaſe, creeping upon him, and inclined much to phyſick for prevention. Once he repaired to Dr. Bokenham of Bury with a liſt of complaints. But the doctor could find no ground for any of them, nor to ſuſpect him ill; but laughed at him, and ſent him away. This correction aſwaged the ſpleen a little; but he was not cured till a deluge of buſineſs drowned all ſuch kind of thoughts. But he had one ſymptom which often alarmed him, which was much ſpitting; but, in truth, it was a benefit of nature; for it was plain that a noxious phlegm diſcharged itſelf that way; for while his ſpitting con-

tinued, he was always well, but, if that ſtopped, he was as ſurely ill. He was all his life ſolicitous about his health, and fearful of getting cold, for which end he went thick clad, and wore a broad ſtomacher on his breaſt; and, commonly, a little leather cap, which ſort was then called ſculcaps; but thoſe devolved to other uſes I ſhall mention afterwards.

Great increaſe of buſineſs.

Soon after his being called to the bar, he began to feel himſelf in buſineſs, and, as a freſh young man of good character, had the favour of diverſe perſons, that out of a good will, went to him, and ſome near relations. He was once aſked if he took fees of ſuch. *Yes*, ſaid he; *they come to do me a kindneſs; and what kindneſs have I if I refuſe their money?* The attornies alſo were very civil to him, and brought him motions, which gave him opportunity of ſhewing himſelf; and theſe obligations he remembered to the laſt, and returned them when it came to his turn to oblige with any juſt favour he could ſhew: and he never failed to do it. His acquaintance was ſo diffuſed through the whole relation and dependance of Sir Jeofry Palmer, that he had them all entirely, and indeed, as well before as after he was called to the bar, he lived as one almoſt ingrafted in the family; and, not only his intereſt was greatly derived from thence, but, his converſation was almoſt confined to them; and they were all ſo eaſy and friendly to each

other, that they lived and converſed as if they had been literally of a family. His wheel of good fortune turned upon the favour of Mr. Attorney Palmer, whereon the criſis of his preferments in the law moved. But before I come to ſet forth the hiſtory of that, and enlarge farther upon his lordſhip's better fortunes, I will diſpatch one or two of his moſt ſenſible griefs.

Grieved at the loſs of his ſiſter, and her character.

The firſt was the loſs of a ſiſter, named Mary, who was married to Sir William Spring in Suffolk, and died not long after the birth of her firſt child, and the child not long after her. He had a particular engagement of friendſhip and brotherly love to that lady, who, beſides the advantage of her perſon, had a ſuperior wit, prodigious memory, and was moſt agreeable in converſation. I do juſt remember ſo much of her (for I was very young when ſhe married) that, for hours and hours together, ſhe diverted her ſiſters and all the female ſociety at work together (as the uſe of that family was) with rehearſing by heart prolix romances, with the ſubſtance of ſpeeches and letters, as well as paſſages; and this with little or no heſitation, but in a continual ſeries of diſcourſe: the very memory of which is to me, at this day, very wonderful. She inſtituted a ſort of order of the wits of her time and acquaintance, whereof the ſymbol was a ſun with a circle touching the rays, and, upon that, in a blue ground, were

wrote αυτάρχης in the proper Greek characters, which her father ſuggeſted. Diverſe of theſe were made in ſilver and enamel, but, in embroidery, plenty, which were diſperſed to thoſe wittified ladies who were willing to come into the order; and for a while they were formally worn, till the ſoundreſs fell under the government of another, and then it was left off.

Loſs of Mr. Edward Palmer, and great benefit by Mr. Attorney's favour.

Next to this, the loſs of his lordſhip's boſom friend Mr. Edward Palmer, Mr. Attorney Palmer's younger ſon, afflicted him. I have heard him ſay he never was ſo ſenſible of a paſſion of grief, as upon his death; and, for a long time after, he eaſed himſelf often upon the impotence of crying. For, beſides the living amity between them, in that moment, loſt, he was preſent, embraced, and held him in his arms when he died; than which nothing could more aggravate his ſorrow. This friendſhip began by meſs-making in the temple-hall, and brought his lordſhip into other beneficial acquaintance, as of the Hydes, then, related to the greateſt employments in the law: one of that name, whoſe younger ſon was of the Middle Temple, had the great ſeal as lord chancellor, and another was lord chief juſtice of the King's Bench; and this acquaintance owned his lordſhip for a relation, and was cultivated by him with all the application he could make. But this Mr. Palmer firſt brought his lordſhip to the attorney general's knowledge and familiarity, and the very

great benefits to him thereby. For he, not only had his direction and aſſiſtance, as well as encouragement, in his ſtudies, but was by him, as it were, led by the hand into the highway of preferment. For that great and ſudden encreaſe of his lordſhip's practice, which I mentioned before, may not be entirely aſcribed to capacity. It is more than probable that in proceſs of time, he had advanced himſelf by the pure ſtrength of his genius, but not by ſuch large ſtrides as he made in getting money and loping into preferments, as he did, without the aid of friends and good fortune; for circumſtances of perſons and times were moſt propitious, to his character. And of thoſe happy contingents, the firſt was this friendſhip of Sir Jeofry Palmer, which conduced much to the luſtre of his lordſhip's reputation.

Serviceable to the attorney general.

And therein the attorney-general did no leſs ſerve himſelf; for he made uſe of his couſin North, (as he moſt kindly uſed to ſtyle him) in being perſonated by him in Weſtminſter hall, and otherwiſe by his conſults upon motions of law depending: for, at the latter end of his time, he grew very infirm and weak, and when he could not attend in the court of King's Bench to give accounts and anſwers to the court in the king's affairs, as belonged to his office, he directed his lordſhip with inſtructions to do it for him, and he acquitted himſelf therein with ſuch decent modeſty, as well as neat and conciſe ſpeaking, as got him

no little credit. Mr. Jones at the bar, who had the capital practice of that court, was much diſturbed at the advances this young gentleman made ſo near his territory, and could not forbear flirting at him, as—*Come, Mr. Deputy Attorney, what have you to ſay now? You are to be of the king's counſel ſhortly;* and the like; which ſhewed a ſpirit of ambition and envy, and was an occaſion of ſome inconvenience to his lordſhip, as will be ſhewed elſewhere. I have heard his lordſhip ſay, that once, at the deſire of the attorney-general he had conſulted books, and gathered together upon a paper, the reaſons of law, upon a caſe he (the attorney) was to argue; and that he uſed that very paper, and argued almoſt word for word out of it. And I have ſuch a paper wrote by his lordſhip, with ſome notes, of the attorney's hand, in the margin. But his lordſhip ſaid he never mentioned it to any of his family, but to me only, leſt they ſhould think him vain and fictitious.

Argued for the king againſt Hollis, and made the king's counſel.

Another ſingular opportunity, by means of the attorney, he had of ſhowing himſelf; which was the arguing in the houſe of lords upon a writ of error for the King againſt Hollis, &c. The ſtory of the five members in King Charles the firſt's time is well known who being proſecuted for the riot committed in the Houſe of Commons, in holding the ſpeaker down in his chair, were

convicted. After the reſtauration, the commons thought that the record of this conviction might be prejudicial to the privilege of that houſe, and ordered a writ of error to be brought, and Mr. Attorney was to find counſel to argue for the king, againſt the Lord Hollis, who was one of the five, and firſt named in the record. Mr. Attorney being an aſſiſtant in the Houſe of Lords, could not argue, nor could he prevail upon any of the ſerjeants, or other eminent practiſers to do it; for they ſaid it was againſt the commons of England, and they dare not undertake it. At laſt the attorney ſaid his couſin North ſhould do it; and accordingly at different times, as his other practice would allow him, he prepared his argument, which was performed at the bar of the houſe, and (with eſpecial notice taken of his comely youth, and modeſt, but cogent reaſoning) his argument was approved, and although the commons carried the cauſe, he was immediately thereupon made of the king's counſel, which gave him the privilege of pre-audience, and coming within the bar. This action and its conſequence, had the effect of a trumpet to his fame, for the king had no counſel at law, then except ſerjeants. But I ſhall beg leave to enlarge a little upon this matter, with ſome farther circumſtances, which I am encouraged to do by a paper I found, in which his lordſhip had noted his ſeveral

ſteps of preferment with intent at leiſure, to have drawn them into a relation of ſhort hiſtory. He had made preparatives, ſuch as theſe, concerning public matters; but he never had time to purſue them: all or moſt of which I ſhall inſert in their proper places throughout this work, and annex what occurs to me that may appertain to them. But as to the caſe before us, his lordſhip's note is as follows.

How King's counſel, Hollis — and the five members, and his Lordſhip's undertaking to argue for the king, was at a time when his hands were full of buſineſs, and he was very much ſtraightened in his preparations; and he came up with the greateſt reluctance, and nothing but a right reaſoned reſolution could have conquered his modeſty. But that which gave him moſt aſſurance was, that he was ſatisfied, he argued on the right ſide, and that upon the face of the record, the law was for the king. The information (among other things), was for a violent holding the ſpeaker in the chair, in breach of the peace. Hollis pleaded the privilege of the commons, that all offences committed in the houſe by the members, were puniſhable only by the houſe itſelf: and the attorney-general demurs, and the court of King's bench gave judgment for the king, and this was the (chief) error. His lordſhip inſiſted that, 1.

This caſe of Hollis, and other the five

His lordſhip's note of this affair.

This was an offence againſt the peace, with the aggravations, for it was ſo admitted by the plea; and 2. That if the houſe had puniſhed it, and it had been ſo pleaded, it had been well. But 3. Their not puniſhing left the offence at large, which ought to be puniſhed ſomewhere: and the authorities cited, were clear that privilege did not extend to offences againſt the peace, and that ſuch might be puniſhed out of parliament, and future parliaments could take no notice of them. This was the chief point, but there were in the caſe diverſe other chicaneries, as would appear in the argument itſelf, if made public. The Duke of York was pleaſed to enquire who that young gentleman was, who had argued ſo well; and Mr. Thomas Gray, who attended as a lord's eldeſt ſon, told the duke that he was a younger ſon of the Lord North, and what hopes he gave of his being a very able lawyer, and what was rare at that time, of loyal principles; and moved his royal highneſs to prevail with his majeſty to encourage him by making him one of his majeſty's counſel. And all this was only as the occaſion offered, without any ſuit or contrivance on his lordſhip's part, to bring it about. His lordſhip feared that the Lord Keeper Bridgman, who by his place, ſuperintends the preferments in the law, might take it ill that his lordſhip did not move by him; therefore he

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waited upon him, and gave him an account how it ſucceeded. And the lord keeper having knowledge of the matter beforehand, acquitted his lordſhip of all blame towards him, and wiſhing him much joy, gave him all the encouragement that could have been wiſhed for or expected.

A diſpute with the benchers of the Middle Temple.

Upon his lordſhip's being made of the king's counſel, there happened a diſpute in his ſociety of the Middle Temple; which ended favourably to him, and augmented his reputation in Weſtminſter-hall. The rulers of the ſociety called Benchers refuſed to call his lordſhip; after he was king's counſel, up to the bench; alleging that if young men by favour ſo preferred, came up ſtraight to the bench, and by their precedence topt the reſt of the ancient benchers, it might in time deſtroy the government of the ſociety. Hereupon his lordſhip forebore coming into Weſtminſter-hall for ſome ſhort time, hoping they would be better adviſed, but they perſiſting, he waited upon the ſeveral chiefs, and with modeſty enough acquainted them of the matter, and that, as to himſelf, he could ſubmit to any thing; but as he had the honour to be his majeſty's ſervant, he thought the ſlight was upon the king, and he eſteemed it his duty to acquaint their lordſhips with it, and to receive their directions how he ought to behave himſelf, and that he ſhould act as they were pleaſed to preſcribe. They all V. chap. pref. vol. 2.

wiſhed him to go and mind his buſineſs, and leave this matter to them, or to that effect. The very next day in Weſtminſter-hall, when any of the benchers appeared at the courts they received reprimands from the judges for their inſolence, as if a perſon whom his majeſty had thought fit to make one of his counſel extraordinary, was not worthy to come into their company; and ſo diſmiſſed them unheard, with declaration that until they had done their duty in calling Mr. North to their bench, they muſt not expect to be heard as counſel in his majeſty's courts. This was Engliſh, and that evening they conformed, and ſo were reinſtated. It is one of the properties of an ariſtocracy, to hate that any perſons ſhould come amongſt them, but of their own chooſing. I have heard, that, ſince the revolution, whereby (as they termed it) they were manumiſed, they have not called any of the king's counſel extraordinary (who are now become numerous) to the bench; which ſhews the different walks ſome matters will take in different times.

Of Sir Jeofry Palmer, and the converſion of his lady.

I have already mentioned his lordſhip's happy acquaintance with Mr. Edward Palmer, the attorney-general's younger ſon, which was the riſe of all the favour and approbation Mr. Attorney ſhewed him; and that, the riſe of his lordſhip's ſucceeding courſe of preferments. And how helpful and aſſiſtant he was to the attorney in

his declenſion: and the repute gained thereby, with the emulation of Sir William Jones, that happened thereupon, hath been already ſet forth in the Examen. I ſhould here have thought it reaſonable to have given ſome account of that worthy perſon, on whom his lordſhip's fortunes ſo much depended: but ſince I have ſaid ſo much of him in the Examen, I think there is no need of inſiſting any farther upon his character here; and therefore ſhall only relate the following remarkable ſtory. He had married a lady, who was a Roman Catholic, upon terms not to meddle with each other's religion; but each to enjoy their ſeveral church profeſſions, without any mention to the contrary, and both kept parole religiouſly; and yet, by dint of his egregious piety and integrity, without any other arguments or eloquence, he converted her to the communion of the Church of England, and it fell out thus. One Sunday morning his lady would riſe with him, which ſhe had uſed not to do, and he told her ſhe need not, for her church began later, and aſked, *why ſhe would riſe ſo ſoon?* She anſwered, *to go to church with him;* and ſo ſhe did, and continued ſo doing all the reſt of her life. And to ſome of her family ſhe declared, that ſhe found his knowledge ſo great and his courſe of life ſo truly pious and virtuous, that ſhe concluded that he muſt needs be in the right, and that ſhe would

ſubmit her judgment to his, rather than to any other human authority upon earth. This was the good man that embraced his lordſhip, as if he had been his child; and loving his company, received him into familiarity of diſcourſe, conferences, mutual intercourſe of affairs, and reciprocal acts of good will and friendſhip, as if, even before he was king's counſel, he had been a co-attorney-general. And he was not only the great cauſe of his lordſhip's proficiency and ſudden riſing in the law, but his mere acquaintance and favour may be juſtly accounted one of his lordſhip's capital preferments.

Uſed the Norfolk circuit.

Theſe opportunities may be eſteemed, as they really were, moſt benign to the credit of a young counſel, yet the virtue intrinſically moved from his own capacity, for without ſome tranſcendency on that ſide, the effect had been reverſed, and proved loſs rather than gain of reputation. There were ſome more ſuch accidents, which augmented his lordſhip's eſteem in the law; which I ſhall touch upon, but firſt mention his going the circuit, to which they properly belong. And here I am to ſhew what great application and induſtry he uſed in that branch of his practice, which in a few years raiſed him to the poſt (as they call it) of cock of the circuit, which ſuppoſeth him (as truly he was) a counſel of one ſide or other, in every cauſe of value

to be tried. His lordſhip ſtayed not long after he was called to the bar, before he took upon him to go circuits. His choice was that ſtyled of Norfolk, where he was beſt known, and that by employments and performances, as well as family and acquaintances. He reſolved to go through, although the firſt counties, as Bucks, Bedfordſhire, Huntingdonſhire, and Cambridgeſhire, are very ſteril to a beginner, and no young man, at his firſt entrance into practice, can expect much buſineſs under the ſervice of an apprenticeſhip and ſucceſſion to thoſe who have the poſſeſſion, till they fall away. But his reſolution was to perſevere, knowing ſucceſs in circuit buſineſs to be a cardinal ingredient in a lawyer's good fortune. And he ordered the matter ſo that, whether he had much or little to do, he did not loſe his time; for he was a diligent noter of every paſſage that was in the court or elſewhere, in the law, new, or he thought material. And he made himſelf judge ſo far, that if a good ſentence came from the mouth of an indifferent judge, or even of the counſel, he noted it, and whatever the beſt judge might ſay, if it did not agree with his reaſon, he took no notice of it. So bees gather honey from all ſorts of flowers. He was exceeding careful to keep fair with the cocks of the circuit, and particularly Serjeant Earl, who had almoſt a monopoly. The ſerjeant was a very co-

vetous man, and when none would ſtarve with him in journies, this young gentleman kept him company. Once at Cambridge, the ſerjeant's man brought his lordſhip a cake, telling him, *he would want it, for he knew his maſter would not draw bit till he came to Norwich.* And it proved ſo. They jogged on, and at Barton Mills, his lordſhip aſked the ſerjeant if he would not take a mouthful there. *No boy*, ſaid he, *we'll light at every ten mile's end, and get to Norwich as ſoon as we can.* And there was no remedy. Once he aſked the ſerjeant in what method he kept his accounts; *for you have*, ſaid he, *lands, ſecurities, and great comings-in of all kinds? Accounts, boy*, ſaid he, *I get as much as I can, and I ſpend as little as I can; and there is all the account I keep.* But his lordſhip was ſure to keep the ſerjeant's diſcourſe flowing, all the way they rode, for being moſtly of law, and tricks, and ſometimes of purchaſes, management, and the like, it was very beneficial to one who had his experience to gather: and all he received from others, he made his own. And in the court, if he was concerned as counſel, he ſtood in great awe of the chief practiſers; for they having the conduct of the cauſe, take it ill if a young man blurts out any thing, though poſſibly to the purpoſe, becauſe it ſeems to top them; and ſometimes, if it doth not take with the court, throw up, ſaying, *the cauſe was given*

away which almoſt blaſts a young man. Therefore, when he thought he had a ſignificant point to offer, he firſt acquainted the foreman with it, which was commonly well taken: and he in return would ſay, *move it yourſelf,* and then he ſeconded it. Theſe diſcretions, reſpecting the counſel, did him great ſervice; and I have more to remember anon, that reſpect the judge.

Governed the commiſſion for dividing the fens, with applauſe.

But firſt, I ſhall remember ſome of the advantages which brought his lordſhip ſo ſoon into circuit buſineſs. One of which was his being put into the commiſſion, purſuant to the act of parliament, for dividing the great level of the fens; and which conduced much to his lordſhip's fame. And that was done to the intent his lordſhip ſhould take the chair, and direct in the execution of it. When this commiſſion firſt met, and he was put in the chair, he obſerved that they had no copy of the act before them, but only that which was printed for common uſe, and he did not think that ſufficient, for it was but a private act, of which the judges did not, *ex officio,* take notice, and there might be errors of the preſs: and accordingly he took care to have an authentic copy examined by the record itſelf. After that he propoſed to the commiſſioners ſuch apt methods for their proceedings in that commiſſion, that the gentlemen were extremely pleaſed: for they were ſatisfied that all that he propoſed

would be for the eaſe of the commiſſioners and of the country, and alſo conducive to an equal diſtribution of juſtice to particular perſons, who for their intereſts appeared before them. And theſe methods being ſo fairly and ingenuouſly diſplayed at the firſt, the gentlemen of the commiſſion admired the invention and dexterity of one ſo young, and accordingly agreed to every thing he propoſed. And afterwards, through the whole courſe of that commiſſion, he had the authority of a judge amongſt them, and was ſeldom interrupted or oppoſed in any thing he dictated to them; for they ſaw plainly he had both ſkill and will to do right in every thing. And the country people, ſeeing him rule the roaſt (as they ſay) there, took him for the judge in earneſt. And if any of them had a caſe to come before the commiſſioners, of which there was like to be any doubt or conteſt, they would, if poſſible, come along with a client to him at the aſſizes (of which practice I reſerve to ſpeak afterwards), and there bow and cringe that they might be known again at the commiſſion. Thus every opportunity of tranſacting, put into the hands of a perſon capable of doing well, proves an ingredient of fame, which in profeſſions precarious and competitory as the law is, perpetually, and in a geometrical proportion (to uſe the alluſion) enlarges the ſphere of his practice; and with thoſe that are uncapable, or do

not acquit themſelves well, it hath the contrary effect.

Another employ fell to his lordſhip's ſhare, which did him credit, and conſequently augmented his buſineſs in the country: and that was his being made judge of the royal franchiſe of Ely. He was conſtituted by Dr. Lane, then biſhop. He ſucceeded Wren; one of whoſe ſons, Mr. William Wren, was high bailiff of the liberty, and took the ſeat of an high ſheriff; and ſo the judge, with all the titles of a judge of aſſize. This was the firſt bench of juſtice (if the commiſſion is not accounted one) that his lordſhip ſat on; and to ſay truth, is a very excellent judge ſchool: for there all ſorts of law buſineſs come before him, arreſts, attachments, demurrers, pleadings, iſſues, and trials, and all that chicane in Weſtminſter-hall, the difference lying chiefly in greater and leſs. Diverſe of the circuit counſel and neighbouring attornies have buſineſs and attend there. The worſt of the court is, that the pleadings are *de hora in horam;* and the records are kept by papers filed, and not (as I know) ever made up into rolls. It is ſo in the court of the county palatine of Durham. But thoſe, and even the ordinary courts of aſſizes, as to the fairneſs and regularity of the plea rolls, muſt yield to that of Lancaſter; and the curioſity there is (or was) ſuch that the priſoners were arraigned upon the roll, and not

Conſtituted judge of the iſle of Ely.

upon the bill found, and the whole proceeding to judgment and execution, was alſo entered up and not kept in minute books, as at the aſſizes; which is exceeding commendable in the prothonotary and his clerks there. But, as to the Iſle of Ely, whether ſince that time I write of, in which the ſeſſions have been neglected and new diſcouragements continually growing, the court hath not ſo well anſwered the attendance of a judge as it did then, I cannot ſay.

Regulated the practice, and demanded a cogniſance.

His lordſhip found the ways of the attornies, in their practice, very looſe; and ſcarce any of them could be poſitive what the rules of the court were; but, upon any doubt, ſome ſaid one thing, and ſome another: and the buſineſs was done in a huddle, almoſt by word of mouth, there being nothing but a paper upon the file in order for a trial. His lordſhip endeavoured to regulate all theſe diſorders; making a beginning in the method, which he afterwards purſued in all his judicial places; that is, firſt, by informing himſelf as well as he could what were the rules, and then, by ſlow ſteps, one thing after another, making alterations for the better. But one thing happened which his lordſhip, with no ordinary exactneſs of ſkill in the law, carried through. A ſuit was commenced in the court of Common-Pleas at Weſtminſter, for a cauſe which aroſe in the royal franchiſe of Ely. The biſhop expected that his judge ſhould ſee

right done to his franchiſe, which might be hurt if ſuch precedents were let paſs. And his lordſhip thereupon took care that due authorities, regarding this particular caſe, ſhould be ſigned and executed by the biſhop, directed to him, requiring him to repair to the court of Common-Pleas, and for him, and in his name, to demand of the court the cogniſance of that cauſe then depending in the court. And his lordſhip went to the bar, and, as bailiff of the biſhop, made his demand in due form. And the court, who are hardly enough brought to ouſt themſelves of any juriſdiction, ſcrutinated all points of form, and, finding nothing amiſs in the demand, granted the cogniſance, and the cauſe was removed from that court to the court of the franchiſe. I know no footſteps for many years before, or at any time ſince, of any ſuch demand made or allowed. But the law was plain, and the forms being out of the common road, not, without great care, foreſight and ſkill, to be purſued, and ſtrict exception and cavil to be expected, the caſe required ſuch a counſel as his lordſhip was to prevail in it. I had this matter from his lordſhip's own mouth; but, finding no papers concerning it, I cannot point to the time when the tranſaction was.

There was another opportunity fell in his way as propitious as he could have wiſhed, not only for fame but for learning; and that was a formal iter or juſtice-ſeat of the

Great benefit by attendance at the eyre.

foreſts, that was ordered and proclaimed, and judges were appointed to aſſiſt the lord chief juſtice in eyre, the then Earl of Oxford; and counſel for the king were alſo declared; and they were, Serjeant Maynard, his lordſhip, and who elſe I do not remember. Theſe went all out together, and paſſed from place to place; and the judges were ſolemnly received by the countries as in a circuit; and thus all the greater part of the foreſts on this ſide Trent were viſited. The counſel for the king, in all cauſes in which the king's title was not in queſtion, had liberty to adviſe and plead; ſo good money, beſides a gratuity and riding charges, was picked up. But it is not readily conceived what advantage here was by gaining an idea of the ancient law in the immediate practice of it. For the court of the foreſt is in nature of an iter; and the juſtices proceed, as anciently the juſtices in eyre did, by preſentments, claims, ſeiſures, replevins, &c. very unlike the ordinary proceſſes of the common law in courts of pleas. It is true that the commiſſions of oyer and terminer and gaol delivery are eyre alſo, but reſtrained to perſonal crimes. Here it is of rights, and thoſe after a peculiar law of foreſts, as privileges, franchiſes, grants, cuſtoms, purpreſtures, and offices of diverſe authorities and juriſdictions; whereof the learning would coſt a ſtudent much time and pains,

beſides going out of the way of his more beneficial ſtudies to acquire. And here the whole time of the ſeveral ſeſſions being taken up with the tranſaction of cauſes of this nature, the judges well ſkilled in the old crown law and the prerogative, and no perſon more deeply learned than Serjeant Maynard, who though a counſel was alſo an aſſiſtant to the court, one who had the opportunity of attending, much more an employment in theſe courts, as his lordſhip had, muſt needs perfect himſelf in the general knowledge of the foreſt law, and the juriſdiction of the lord chief juſtice in eyre. This was an opportunity that rarely happens; many reigns paſs before there is another; for it is a great charge to the crown in ſalaries, expences, and rewards; and the profits redounded to the lord chief juſtice in eyre. And it was ſaid at that time, that the king's intent in ordaining a ſeſſions of eyre, was purely to gratify the Earl of Oxford, who was one that ever wanted royal boons. But, as to his lordſhip and his advantages, beſides the credit of ſuch an employ, which was great, this ſervice made him ſtudy the foreſt law a little more than otherwiſe he had done. But now the foreſts ſeem to be neglected, or rather granted out by piece-meal, which kept in due order, as in elder times, and deſtructive encroachments of the countries ſuppreſſed, not only the deer (which are

a trifle) but timber would have ſuch increaſe as would ſupply ſhipping, and ſave great charges, and be a vaſt accommodation of the royal navy. And it is not to be wondered that this oeconomy of the foreſts is laid aſide, ſaving only as to offices for wardſhips; for the ſubject matter is unpopular, and the officers are on the one ſide corrupt and yield to all abuſes, and on the other ſide, oppreſs and extort money of all they can; and as if that were the end of their inſtitution, mind little elſe.

Had favour, but ever obſerved the judge.

His lordſhip was not without eminent good fortune, as well as diſcretion, to help him forward in his circuit practice, which made him ariſe in it faſter than young men have commonly done. As when the Lord Chief Juſtice Hyde was alive, he uſually went the Norfolk circuit. The Chief Juſtice was a weſtern man, but would not take the circuit ſo called, becauſe he would not break a law with a *non obſtante*. And this judge was induſtriouſly favourable to his lordſhip, calling him couſin in open court, which was a declaration that he would take it for a reſpect to himſelf to bring him cauſes, and that is the beſt account that can be given of a favourite; in which capacity a gentleman pretends to be eaſily heard, and that his errors and lapſes, when they happen, may not offend the judge, or hurt a cauſe, beyond which the profeſſion of favour

is cenſurable both in judge and counſel. But this benefit grew, like that under Sir Jeofry Palmer at firſt out of a Temple acquaintance, which conſiſted of young Mr. Palmer, and Mr. Edward Hyde the Lord Chancellor's ſon, and ſome others of that family, who introduced his lordſhip to their patrons: which ſhews that, in the erecting of a lawyer, inns of court commons and converſation may be of vaſt uſe. In circuit practice there is need of an exquiſite knowledge of the judge's humour, as well as his learning and ability to try cauſes; and his lordſhip was a wonderful artiſt at nicking a judge's tendency, to make it ſerve his turn, and yet never failed to pay the greateſt regard and deference to his opinion: for ſo they get credit; becauſe the judge, for the moſt part, thinks that perſon the beſt lawyer that reſpects moſt his opinion. I have heard his lordſhip ſay that ſometimes he hath been forced to give up a cauſe to the judge's opinion, when he was plainly in the wrong, and when more contradiction had but made him more poſitive; and beſides that in ſo doing he himſelf had weakened his own credit with the judge, and thereby been leſs able to ſet him right when he was inclined to it. For, when he found it went againſt the grain, he would not teaze, as the way is, to get credit with the countrymen, who would be apt to ſay, *Look what pains he takes;* but for that time,

ſince there was no remedy, let the matter go. And all this without blame with reſpect to his clients, for he could do no more in any reſpect, but might do worſe by many. And a good opinion ſo gained often helps at another time to good purpoſe, and ſometimes to ill purpoſe; as I heard it credibly reported of Serjeant M—y--d, that being the leading counſel in a ſmall-fee'd cauſe, would give it up to the judge's miſtake, and not contend to ſet him right, that he might gain credit to millead him in ſome other cauſe in which he was well fee'd.

Great diverſity of judges.

There were ſome judges came that circuit, of whoſe abilities time hath kept no record, unleſs in the ſiniſter way, as Morton, Archer, &c. If ſuch expreſſed any thing in favour of his lordſhip's client, he would echo, *ay, my lord;* and then the other ſide fretted at him, as one that knowing better ought not to ſay ſo. Once Archer noted a difference between a renunciation of an executorſhip upon record, and *in pais. Ay, my lord,* quoth the counſel; which made the judge as fierce as a lion, when he was ſo backed; and woe be to the other ſide if they contradicted it; though it was no better than arrant nonſenſe. There came other judges who were, and ever will be, famous among the learned in the laws; as Wadham, Windham, and the Lord Chief Juſtice Hales. His lordſhip had no way to court theſe, but by his learning and ſtrength

of reaſon. Hales had an early opinion of his lordſhip's ſkill in the law, and believed he would grow eminent in the profeſſion. For once, when the court was ſat, he perceived him crowding very hard to get in, and from the bench ſpoke to the people to make way for the little gentleman, *for*, ſaid he, *he will ſoon make way for himſelf.* In ſhort, his lordſhip took all the pains he could to ſettle himſelf well in circuit practice. He uſed to ſay that the circuit found him buſineſs for the town, and the town for the circuit.

Moſt careful to be inſtructed.

One thing was principally his care, which was to take good inſtructions in his chamber. He examined carefully the iſſue, as the pleadings derived it; and peruſed all the deeds if it were a title, and not ſeldom examined the witneſſes if it were fact; by this he was enabled to make a judgment of the cauſe, and to adviſe his client as to going on or not. And the attorney, as well as the client, by his care and dexterity in probing the cauſe, ſtarting objections, inventing points, foretelling events, and what the judge will ſay, and the like, obſerved his character, and that he might be depended on, which engaged both afterwards to come to him again; eſpecially the attornies, who love ſuch as have ſkill, and take pains to credit them by ſecuring the beſt event a cauſe will bear.

Mr. Coleman a cotemporary and friend.

I am advanced ſo far in theſe obſervations, as, without more, it may plainly be perceived that from an humble beginner, rejoicing at a cauſe that came to him, his lordſhip ſoon became cock of the circuit; and every one that had a trial, rejoiced to have him on his ſide. There was another gentleman, who grew up together with his lordſhip in the circuit practice, with nearly the ſame ſpeed, one Mr. Coleman of the Burnt Ely family in Suffolk. And as it happily fell out, there was no ſort of emulation or competition to create uneaſineſs betwixt them, for they were for the moſt part, oppoſed, if one of them was for the plaintiff, the other was for the defendant, and from the beginning to the end, held not only a fair correſpondence, but were very good friends; and how could it be otherwiſe, when both were ingenuous, good lawyers, ready ſpeakers, candid gentlemen, and who in purſuit of their own, improved each other's intereſt? Mr. Coleman had a very comely aſpect, and a very voluble tongue, It was ſaid that an attorney aſked his client that ſtood behind him, which of thoſe two gentlemen ſhould be his counſel? *Who*, ſaid he? *Why that nimble chaps there.* It fell out that this gentleman died immaturely, elſe he had fallen into that track of preferment as Sir William Jones fell into; of which there is an account elſewhere. There were diverſe ſerjeants and others, that went

the ſame circuit, but none that could cope with theſe two. I have heard them relate paſſages in their circuit practice, to make the company merry. As when they two have been together, and a brace of ſerjeants to boot, and they knew a flat nonſuit in the cauſe, which the others did not ſee, they ſtood aſide, and left the brethren to wrangle with the court about nothing, till having laughed and ſneered enough, one ſtept forward, and cutting the thread, the cauſe fell all at once.

Caſe of his aunt the Lady Dacres.

I have here ſhewed diverſe inſtances of his lordſhip's favourable means of ſhewing his abilities, but little or nothing of his conduct in any particular matter; and becauſe his character may better appear by ſuch, than by general eulogies, I will ſubjoin one or two of his dexterous exploits. The Lady Dacres had ſuits depending againſt Chute, the eldeſt ſon of her huſband then deceaſed, for a ſum of money ſecured upon land by her marriage contract; which Chute had married her daughter, and dying left upon her hands four grandchildren to take care of. She entered upon the eſtate, and took the profits for diverſe years, by which ſhe became accountable. His lordſhip, being ſenſible that his aunt run great hazards of being called to an account by the eldeſt ſon at his full age, and inſtead of having debt, being made a debtor, adviſed her to get a decree, and a manager ap-

pointed, and ſhe to anſwer only what monies ſhe actually received, and as things fell out afterwards, the reaſons for this precaution appeared moſt lively, for it preſerved her (who kept no good account), from oral teſtimonies of imaginary values, which had pinched her to the quick, if ſhe had not had that defence. That courſe in Chancery is more common of late, than it was then; and it fell not under every one's cap to give ſo good advice. His lordſhip had much to do with this aunt; who uſed him but ſcurvily; as will appear from what I am going to relate.

She undertakes to defame him, and his humanity.

She had a bill in Chancery againſt her, and his lordſhip muſt draw her anſwer; which Serjeant Fountain peruſed, and directed to be more full in a chief point of fact. Which was done, and then other counſel told her, ſhe had confeſſed too much, and the anſwer muſt be taken off the file and mended; which with leave of the court was alſo done, and no harm yet. But his lordſhip's father aſked her jocularly, *if ſhe gave his ſon any fees for the buſineſs he did her?* This made her think it a plot of the young lawyer, (but far from any colour of truth,) to get money out of her; for he never ſaw a penny of her money, for all his pains in trotting to and fro, and doing buſineſs for her. And from that time, ſhe threw him off, accuſing and railing at him, all the town over, for falſifying her an-

ſwer, and making her ſwear what was not true (if it had ſtood) to the ruin of her cauſe. And herein ſhe ſerved herſelf another way, for her adverſary defamed her for ſwearing and unſwearing, and it was not amiſs to have a button in the room. But ſhe carried the quarrel ſo high as to get one of no ſmall account, to let Sir Jeofry Palmer know what a ſnake (meaning his lordſhip) he had in his boſom. In ſhort, ſhe intended his ruin if poſſible. But the merriment which the good attorney-general made with his Couſin North for his early practice, was a diverſion ſufficient. All this is not unſeaſonable to be remembered, becauſe it reflects upon his lordſhip the ſingular virtue of humanity. For all the while ſhe defamed him in this manner, which was for ſeveral years, he made no replies, but by ſmiling, and paid her all the devoirs due to ſuch a parent, and ſerved and aſſiſted her in all her exigencies, ſhe never failing to make uſe of him, when ſhe found it might be of profit to her: and yet ſhe never could afford him a good word to his and her dying days.

A piece of art in a trial for tithes.

His lordſhip had a relation, one Mr. Whitmore of Balms near London, an humourſome old gentleman, but very famous for the meer eating and drinking part of houſekeeping. He was owner of Waterbeach near Cambridge, and took a fancy that his eſtate ought not to pay tithes, and ordered his te-

nants expreſsly to pay none, with promiſe to defend them. The parſon had no more to do but to go to law, and by advice brought an action of debt, for treble damages upon the ſtatute againſt ſubſtraction of tithes. The tenants got the whole demand to be put in one action; and that ſtood for trial at the aſſizes. Then he conſults his couſin North, and retains him to defend this cauſe; but ſhews him no manner of title to a diſcharge. So he could but tell him he would be routed, and pay treble value of the tithes, and that he muſt make an end. This ſignified nothing to one that was abandoned to his own teſty humour. The cauſe came on, and his lordſhip's utmoſt endeavour was to fetch him off with the ſingle value and coſts; and that point he managed very artificially: for firſt, he conſidered that Archer was the judge, and it was always agreeable to him to ſtave off a long cauſe. After the cauſe was opened, his lordſhip for the defendant, ſtept forwards, and told the judge that "this would be a long "and intricate cauſe, being a title to a diſ-"charge of tithes, which would require the "reading a long ſeries of records and an-"cient writings. That his client was no "quaker, to deny payment of tithes were "due, in which caſe the treble value was "by the law intended as a ſort of penalty. "But this was to be a trial of a title, which "his client was adviſed he had to a diſ-

" charge: therefore he moved that the " ſingle value might be ſettled; and if the " cauſe went for the plaintiff, he ſhould " have that and his coſts (which coſts, it " ſeems did not go if the treble value was " recovered), and then they would proceed " to their title." The other ſide mutinied againſt this impoſition of Mr. North, but the judge was for him, and they muſt be ſatisfied. Then did he open a long hiſtory of matters upon record, of bulls, monaſteries, orders, greater and leſſer houſes, ſurrenders, patents, and a great deal more, very proper if it had been true, while the counſel on the other ſide, ſtared at him; and having done they bid him go to his evidence. He leaned back, as ſpeaking to the attorney, and then, *My lord*, ſaid he, *we are very unhappy in this cauſe. The attorney tells me, they forgot to examine their copies with the originals at the Tower;* and (ſo folding up his brief) *My lord*, ſaid he, *they muſt have the verdict, and we muſt come better prepared another time.* So, notwithſtanding all the mutiny the other ſide could make, the judge held them to it, and they were chouſed of the treble value. This was no iniquity, becauſe it was not to defraud the duty, but to ſhift off the penalty. But the old gentleman told his couſin North, he had given away his cauſe. His lordſhip thought he had done him ſervice enough; and could but juſt, (with the help of the beforeſaid

reaſon) ſatisfy himſelf that he had not done ill.

In a debauch eſcaped nearly with his life.

Before I mention the farther ſteps of his lordſhip's riſing, I muſt get rid of a ſcurvy downfal he had, which had well nigh coſt him his life. That he was what was called a ſober perſon, was well known; but withal, that he loved a merry glaſs with a friend. But once in the circuit, being invited with the reſt of the counſel, to dine at Colcheſter with the recorder Sir John Shaw, who was well known to be one of the greateſt kill-cows at drinking in the nation; he with the reſt of his brethren, by methods too well known, got very drunk. They were obliged to go on, and in that condition mounted, but ſome dropt and others proceeded. His lordſhip had a clerk one Lucas, a very drunken fellow, but at that time not far gone. He thought it his duty to have a tender care of his maſter, who having had one fall (contrary to the ſound advice of his experienced clerk), would needs get up again, calling him all to nought for his pains. His lordſhip was got upon a very ſprightly nag, that trotted on very hard, and Lucas came near to perſuade him not to go ſo faſt; but that put the horſe upon the run, and away he went with his maſter full ſpeed, ſo as none could follow him. The horſe when he found himſelf clear of purſuers, ſlopt his courſe by degrees, and went with his rider (faſt aſleep upon his back)

into a pond to drink; and there ſat his lordſhip upon the ſally. But, before he fell, Mr. Andrew Card, now an eminent practiſer of conveyancing in Gray's inn, and then Mr. Coleman's clerk, came up time enough to get the horſe out of the pond before he fell off; elſe he had been loſt: for which ſervice his lordſhip ever had a value for Mr. Card.

They took him into a public houſe nigh at hand, and left him to the care of his man; but ſo dead drunk, that he knew nothing that happened to him. He was put into a bed; and the reſt of the company went on, for fear of loſing their market. Next morning, when his lordſhip awaked, he found he was in a ſtrange place, and that, at a fire-ſide in that room, there were ſome women talking ſoftly (for talk they muſt), he ſent out all his ſenſes to ſpy, if he could, what the matter was. He could juſt perceive they talked of him. Then he called for Lucas, and bid all go out of the room but him; and then, Lucas, ſaid he, *Where am I?* He was glad the danger (of which Lucas gave him a ſenſible account) was over, and got him up to go after his fellows. Mortified at the accident.

I remember, when his lordſhip told this ſtory of himſelf, he ſaid the image he had, when his horſe firſt trotted, and ſo faſter and faſter, was as if his head knocked againſt a large ſheet of lead, as a ceiling over Moderation in drinking.

him; and, after that, he remembered nothing at all of what happened till he awoke. His lordſhip, of one that was not moroſe and uncomplaiſant, was the moſt ſober that ever marched through the world as he did. I, that was almoſt continually with him, never ſaw him in a condition they call overtaken; and the moſt hath been but juſt diſcoverable in his ſpeech; for he had ſtrength of head to bear a great deal: and when he found that infirmity coming upon him, he uſed to ſit ſmiling, and ſay little or nothing; ſo harmleſs a thing of a petit good fellow was he: and this only in company that, in ſome ſort, conſtrained him; and that was very ſeldom. As once, when he was attorney general, he dined with the Earl of Sandwich, and, in the afternoon, went to the privy council to plead, upon a petition, before the king: and the next day after, the Earl aſked one of the lords how Mr. Attorney behaved himſelf; *very well*, ſaid that lord. *I thought ſo*, anſwered the Earl, *for I ſent him inſtructed with at leaſt three bottles in his belly.* That was a good medicine for his modeſty, and, perhaps, at court, no ill preparative. But, ſetting aſide that rhodomontade, his lordſhip, by a ſteady temperance, and ſobriety, held the empire of his reaſon, and vigour of his conſtitution, ſafe and upright till, under the cold hand of death, both fell together. But, as for ſuch entertainments as theſe, it is great

pity that the tokens of barbarity ſhould yet remain; and much more that the conſequences, often fatal, ſhould be as braves of conqueſts, with a people who would take it ill not to be accounted civilized, wiſe and learned.

His lordſhip's courſe of life, while he was in great buſineſs, was moſt philoſophical, till he was ſolicitor-general, and married; and then he kept houſe, and, at meals, ſcarce ever failed his family: but, before, he uſed the commons in the hall, at dinner, perſonally, and, at night, in his chamber. And when he was out of commons, the cook uſually provided his meals; but, at night, he deſired the company of ſome known and ingenious friends, to join in a coſtelet and a ſallad at Chattelin's, where a bottle of wine ſufficed, and the company dreſſed their own feaſt, that conſiſted in friendly and agreeable converſation. But in term, and while buſineſs was ſtirring, he kept his chamber, becauſe (in order to next day's work) the attornies and agents came in at all hours; and then he deſired the company of a friend or two, that, in the intervals of taking inſtructions, he might come out and ſolace a little with them, and return when he was ſummoned. And the repaſt among us all, was only his commons and a ſingle bottle: but what is that to the feaſt I mentioned, which was never wanting? When his practice was

How his leiſure time paſſed.

but little, and, for the moſt part, when he was a ſtudent, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at ſuch times to be alone; but, having any company, he could diſcharge his thoughts by diſcourſe. After he was of the king's counſel, he kept a coach, and, at leiſure times, uſed to air himſelf in that; but with a friend to receive his diſcourſe and give handles for more.' But, while I was with him, which was, firſt, while Sir Jeofry Palmer was but juſt alive, I cannot ſay I ever knew him to have been twice at any tavern.

Made ſolicitor general, and dropped circuits.

Here we drop our circuiteer; which character laſted till his lordſhip was made the king's ſolicitor general: and that was when Sir Edward Turner was made lord chief baron: for, upon the death of the attorney general Palmer, Mr. Solicitor Finch was made attorney; and there being an oppoſition made by the Duke of Bucks, in favour of Mr. Jones, againſt his lordſhip, who had much the fairer pretence, an expedient, for that time, was found, by making the then ſpeaker, Sir Edward Turner, ſolicitor. But of this affair we have his lordſhip's notes, which I ſhall inſert and add a comment, according to promiſe.

His (Sir Jeofry Palmer's) death made a contraſt —— This incident made His note about it.

the wheel of preferments turn. Sir Heneage Finch, who was ſolicitor, was made attorney general. Then the queſtion came who ſhould ſucceed him? The Lord Keeper Bridgman, and the new attorney, beſides the indifferent intereſt at court, and I believe, the king himſelf, were for his lordſhip; and why not? For he was next oars, the king's ſervant already, and had not demerited. It had been ungracious to have poſtponed him, and taken in a new man that never had ſerved; and none might gueſs at his inclinations to ſerve well. And this was Mr. Jones, who, being a proud man, could ſcarce bear his lordſhip to go on, ſtepping before him. He applies to the Duke of Buckingham, who at that time was reſpected as a premier miniſter at court. But his character little ſuited that pretenſion; for he commonly turned day into night and night into day, and knew no order of life, or time, but after the calls of his appetite; and thoſe were either lewd or profane. While he was in affairs he favoured the true enemies of the court, the fanatics: and when he was out, he ſet up for one of the heads of that faction. He was ſo entirely abandoned to his pleaſures and eaſe, that he ſeldom regularly attended on any account; but yet, for revenge or faction, he was a diligent ſolicitor; and

undertook to get Mr. Jones the ſolicitor's place. He plied the king ſo cloſe, that he knew not how to clear himſelf of him. But it was underſtood that the king could not be brought to daſh cold water in Mr. North's face, againſt all reaſon, juſtice, and his majeſty's own intereſt; and ſo it depended ſome time. At laſt an expedient was found, viz.

Sir Edward Turner made ſolicitor. His promotion made no contraſt. } This gentleman had ſerved long as

ſpeaker of parliament, and had been uſeful to the crown, and alſo to himſelf. But, on the diſcovery of a ſmall preſent made him by the Eaſt India Company, he was blown in the houſe of commons. The anti-court party took all advantages againſt the court, and made a mountain of this mouſe; for it was but a trifle. However, it loſt him much of his credit and authority in the chair, which he was uſed to have; and he thought fit to give way, and not ſit there longer to be expoſed to the affronts which would continually be thrown at him. This made him incline to accept the ſolicitor's place, until ſomewhat better fell, and then the king was at eaſe. About ſix months after, Sir Edward Turner was made Lord Chief Baron of the Exchequer, and the ſolicitor's place fell void. The king reſolved to have no more ſuch trouble about filling it; but forthwith declared that

Mr. North (then Sir Francis) ſhould ſucceed.

Sir William Jones, king's counſel.

And to ſatisfy the Duke of Bucks in ſome meaſure, his friend, Sir William Jones (then alſo knighted) was made of the king's counſel. And ſince (as they ſay) half a loaf is better than no bread, this promotion, in part, though not altogether, ſatisfied his ambition; for it was ſufficiently thereby declared that, if not to lead, he was ſure enough to follow, in the track of preferments.

Reaſons for giving the characters of ſome perſons cotemporaries with his lordſhip.

And becauſe it is impoſſible to account for the lives of buſy men, without touching upon ſome certain dealings of thoſe perſons with whom they tranſacted: whoſe behaviour and tempers will be interwoven, and make good the fulneſs of the relation, as things of different complexions diſtinguiſh each other; and the moſt retired converſe is material to characters, becauſe a man is known by the company he keeps; it will be proper to inſert in this work, the portraits of ſome perſons, cotemporary with his lordſhip, conſorts and coadjutors, as well as adverſaries in buſineſs. And hence will reſult a petit biography, wherein the remarkables may aſſiſt the theory of human nature, which conſiſts in the knowledge of its perfections and infirmities. And none more famous for both of theſe than Sir William Jones, who, upon the ſtrength of the Duke of Bucks, ſet his lordſhip ſo hard for

the ſolicitor general's place. But having ſaid ſo much of him already in the Examen, I ſhall make no repetition here. I will only add that,

Certain miſtakes that might ſit heavy upon his mind, with his behaviour about plots.

If I may have leave to gueſs, the greateſt load, of all that ſat upon, and oppreſſed, his ſpirits, was his undue fervor in proſecuting men to death, for high treaſon, upon the foot of Oates's plot. There are reaſons to make one believe he was at the bottom of the whole ſtratagem; which if the truth were ſo, ſtains his character, and evacuates all that hath been ſaid of his probity, unleſs the heathen ſentence, *regnandi cauſa*, or for the ſake of governing, paſs for good morality. His figging about at the firſt entrance, and ſooner than it could be known that Godfrey was in danger, except by his not dining at home: his running from one great man to another, as he did, to ſay it was thought that Godfrey was made away with by the papiſts: and once, being at his villa in Hamſtead, when the whole faction laboured to ſcatter terrors about the town and nation, as if nothing was ſafe from the papiſts, he ſent an expreſs to London to have his billets removed from the fore, to the back, cellar of his houſe in London, for fear of the fireballs of the jeſuits; and his uſing all the arts of his profeſſion againſt the lives of ſo many poor men, as he convicted to death for the plot, and ſome no very commendable ones to be uſed even in

common cauſes of property, as have been touched elſewhere; and, after that, ſetting up the ignoramus practices, by juſtifying the perjury in print; which was when the tables were turned, and his friends were obnoxious; as if the law were a party weathercock: and then writing to juſtify the exorbitant doings of the Weſtminſter houſe of commons, after the whole nation reſented them, by a pamphlet in anſwer to the king's declaration of his reaſons: all theſe matters were falſe, and, as proved, vain efforts in party work; which he was ſenſible turned upon him, and, ſtaring him in the face, told him he ought to have been wiſer. One thing his lordſhip remarked of him; which was, that, when any notable party project was in embryo, he made him a viſit either to terrify or eſpy, and, by the air of his countenance, to gather ſomewhat. And this more eſpecially when any harm was intended his lordſhip through the houſe of commons. Once he came to ſee him, and told him that, *Now they had them faſt.* It was about the time of the reform of the council, and when he had quitted his place. *Whitehall*, ſaid he, *muſt render in ſix months; and what will you do then?* His lordſhip anſwered quick, *I will join with thoſe, that ſhall turn you out.* This anſwer made him look very dull, being not that which he came for. Theſe inſtances made his lordſhip conclude that, whenever he had the honour

of a viſit from him, there was ſomewhat very ſiniſter in the wind; and the ill omen appeared. But, to conclude, if this gentleman could have been purged of an immane conceit of himſelf and of his own worth, and made clean from his diſaffection to the crown and monarchy of England, which always warped his engagements towards the ſectarian and republican model, and made him reſtleſs and untoward in all his actions, he had been deſervedly a famous profeſſor of the law, and, as ſuch, celebrated in after-times equally with, if not ſuperior to, the reſt of his cotemporaries.

Attended chiefly at the court of chancery, and why.

But, to return. His lordſhip, as well before as after his being made ſolicitor general, and while he was king's counſel, made the beſt of his time in Weſtminſter Hall. And however, at firſt, he planted himſelf in the way of King's Bench practice, he found ſuch beneficial calls to other courts, eſpecially to the chancery, that he thought it beſt to comply with them. And ſo to the exchequer, duchy, &c. which filled him exceedingly with buſineſs; and none more gainful than that of the chancery, in which he got ſo much credit that, at length, he made that court his home, and went off to other courts only on great occaſions, as when ſolemn arguments, trials at the bar, and the like, engaged him. But this I have heard him ſay, and ſometimes obſerved, that, when he was not concerned in the

cauſes at hearing in Chancery, he uſed to go over to the King's Bench; which being a court of law, his vacant time, ſpent there, would be more beneficial to him. And ſo he ſat within the bar, with his note book, reporting, as the ſtudents, about the court, did. He as little neglected opportunities of acquiring knowledge in the law, as of getting money by the practice of it. Witneſs this one inſtance; every Chriſtmas, during all the time of his practice, he read Littleton all over. And this he enjoined himſelf for a taſk: for that book having gained an authority, as a tract of law, and the foundation of conveyancing, he judged it neceſſary to be punctually remembered, without giving time the advantage to obliterate, or corrupt any part of it from his juſt thoughts.

Chief in practice, reputation and truſt.

It is obvious to imagine that a perſon, preferred, and in capital practice of the law, muſt needs be noted, for many excellent performances, as he was in numerous inſtances of nice cauſes that he conducted. But it is not poſſible to go over the liſt of his clients, and ſhew what part he had in their ſeveral hearings, arguments, trials at law, and the like, unleſs a diary of cauſes had been kept for that purpoſe; and that muſt have been a large one, for he was in every cauſe of moment. Nor can I ſay, upon my memory, how many families of nobility and others, having once made uſe

of his advice, made him afterwards arbiter of all their concerns; nor is it to any good purpoſe ſo to do, unleſs it might be alſo demonſtrated wherein his lordſhip's ſagacity, or management, was ſuperlative. It may be equally alledged of every eminent practiſer in the law, that he was concerned in great cauſes, whereof ſome went on his ſide. So that a general obſervation of conſequences, ſuch as his never loſing ground, but rather, riſing in reputation, from the firſt to the laſt, and that, paſſing through the meaneſt, his lordſhip arrived at the utmoſt preferment, and all without obloquy or reprehenſion, implies all that can be inferred to his advantage, even from the particulars, if we had them. But yet I ſhall ſhew ſome inſtances that fell within my own obſervation, which were of an extraordinary nature, and ſhewed his lordſhip's ſingular application and ſucceſs in cauſes that reſted wholly upon his advice and conduct.

Why the caſe of Soams and Bernardiſton is left out.

And here I might properly inſert the great cauſe between Soams and Bernardiſton., which was recovered from a deſperate malign influence of the times, purely by the ſtrength of his reaſon and debate, againſt a torrent of authority. But ſince it is particularly related in the Examen, and a clear account of the ſeveral ſteps it took in Weſtminſter Hall, and how it was finally adjudged in Serjeant's Inn Hall, by his lordſhip,

when he was chief juſtice of the Common Pleas, may be ſeen there, I ſhall ſay nothing of it here, but refer the reader to it. It will alſo be found declared in that book, in what manner his lordſhip was proſecuted in the houſe of commons upon account of this judgment of his; and therefore, I ſhall not make any repetition of it here, but only obſerve one or two things upon the whole of the proſecution. And, firſt, that the lords, at a jocular motion of the Lord Wharton, made holiday of this day of the motion in the houſe of commons, which ſhews that the party, in both houſes, were ſet for the purpoſe. For if the lords had ſat in the morning, the deſign, to be executed at one o'clock, might have taken wind. 2. That although this ſtir was made, on his lordſhip's account, for malice and revenge; or rather, ambition of his place, yet his name was not touched, by any mention, from the beginning to the end. The reaſon of which was becauſe his intereſt and friendſhips, among the beſt quality, were great, and alſo his character, for juſtice, ſo well known, that, upon a declared, perſonal attack, a fiercer oppoſition had been made. 3. That a perſon of a ſound and valuable reputation, and eſteemed uſeful to the public, ſhall have friends unknown appear, in time of need, to aſſiſt, and ſee juſtice done him. 4. That the ſincerity of any buſineſs may be known by the means

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uſed to accompliſh it; for, if either be falſe and perfidious, the other will be ſo alſo; and they counter refer to each other. If a buſineſs be bad, honeſt means will never be uſed to come at it; and, if tricks and falſeneſs appear in the approaches, the end is the ſame. 5. That ſhifts and ſubterfuges, and clancular compoſitions, are of the worſt conſequence to a juſt magiſtrate, who is upon his defence; for being diſcovered, they loſe a real intereſt, and, of friends, create enemies, which, in thoſe times, appeared in diverſe inſtances.

After his lordſhip's death, his judgment confirmed in the houſe of lords.

I ſhall not be juſt to his lordſhip's memory, if I do not ſubjoin the reſt of this proſecution, which, after his death, was reſumed, and with what deſign it was carried on. Upon the revolution, diverſe perſons, who had ſuffered for their crimes in the foregoing reigns, thought that an opportunity was fallen in their way to be revenged, and reimburſed their fines, and what elſe their malice or avarice ſuggeſted, not by any ſlow proceſs of juſtice, but, by act of parliament, all at once. And how far this deſign extended; what profers were made, and how they came off, was a work of another undertaking; (ſee the Examen), and here I muſt deal with what concerned only his lordſhip, whereof this revived caſe was one. The ſheriff Soams had been long dead, and his family ſo low that nothing was expected to be got from thence; yet

Sir Samuel Bernardiſton brought a writ of error of this Exchequer chamber judgment into the Houſe of Lords; and there the knight lawed by himſelf, for no perſon oppoſed him, and, upon hearing, the lords, aſſiſted by the judges, confirmed the reverſal, which was beſide all expectation. Pending this writ of error, his lordſhip's friends, whom he had entruſted with the affairs of his family, had certain intelligence that the deſign was (if this reverſal had been reverſed) to have ſued to the parliament for an act to paſs for charging the reimburſement of the damages, recovered by Sir Samuel Bernardiſton, upon the eſtate of the Lord Chief Juſtice North, upon a ſurmiſe that his judgment was reverſed by reaſon of his lordſhip's undue ſolicitation. And if the lords had ſet aſide the reverſal as illegal, who would doubt of the reſt? At leaſt a vote would put it out of doubt. It was a moſt incredible ſurmiſe that his lordſhip, who was known to be a ſtrict obſerver of the rules and decorum of a judge, and never would bear with any undue ſolicitation to himſelf in matters depending, ſhould ſo criminally, as they would have preſumed, ſolicit other judges in that manner. But corrupt intereſt and faction will preſume, and having power, perpetrate any thing, though never ſo falſe, to ſerve the turn.

His lordſhip's argument

While this dernier writ of error hung in the houſe of lords undetermined, his lord-

printed, and a ſcandal ſuppreſſed.

ſhip's ſaid friends were ſolicitous how to behave themſelves. For, after they knew that the ſhot was made at them, it was not adviſable to make any appearance, or pretence to defend; for that would have had an evil conſtruction. And they durſt not ſo much as ſpeak to any of the judges, or lords, for the like reaſon: and negative errors being beſt, not knowing what to do, they did nothing at all. At length one of them leaned againſt the ſtall of Fox the bookſeller, not a little penſive; and Fox leaned over, and *Sir*, ſaid he, *there is much diſcourſe of a caſe between Soams and Bernardiſton, judged by the Lord Keeper North. I have a copy of his lordſhip's argument, and, with your leave, I will print it; and, perhaps, it may do ſome ſervice.* The hint inſtantly took place; and, leave being given, it was printed and publiſhed, very fair and well; and, coming among the lords, it diſcharged the prejudices the cauſe lay under, and prepared them to admit the reaſons the judges gave in the houſe, and alſo to create ſome favour to the oppreſſed: and ſo ended this long tale. But, by way of remark, to ſhew how faction will get the better of common ſenſe and truth, even in men great pretenders to both, I muſt add that Pollexfen, an arguer for Sir Samuel Bernardiſton, ſince the revolution, publiſhed (or fitted for the preſs) a book of reports, as they are called, conſiſting, chiefly, of his factious arguments;

and particularly in this caſe: but moſt brazenly and untruly, in his preface, tells *how he had carried the cauſe, if the Lord chief juſtice North had not ſolicited the judges to give a contrary judgment;* or to that effect. This book and preface was ſhewn to the, then, Lord Chief Juſtice Holt, who did a ſingular piece of juſtice to his lordſhip's memory and honour; for he ſent for the bookſeller to anſwer it before him, and had ſuppreſſed the book, if he had not promiſed to change the preface, and leave out that ſcandal: which was done; but ſome copies had eſcaped before.

Note upon the deſigns of the faction after the revolution with regard to his lordſhip.

The reader will alſo find, in the aforeſaid Examen, a particular account of the deſigns of ſome gentlemen, that had been of the faction in king Charles the ſecond's time, after the revolution, to charge the fines of the rioters, by act of parliament, upon the eſtates of ſome particular perſons, of whom his lordſhip was one; and how it was fruſtrated, and came to nothing: ſo I ſhall let that paſs, and obſerve only that his lordſhip's friends were the leſs ſurpriſed at this attack, and others of like nature threatened, by reaſon of advice they had from Holland, that the common diſcourſe of the fugitives, and others of the party there, was of their firm purpoſe to take away the eſtates of the tories, by act of parliament. But the times fell into ſuch a thorough ſettlement, that ſuch injuſtice was

not encouraged. How they would have uſed his lordſhip, if he had lived, I cannot ſay; bad enough, if ſome had had their wills. We were informed that, in the houſe, upon mention of the ſtate and city affairs, diverſe members were pleaſed to name him, and made ſharp cloſes to the prejudice of his name and family. But there were always ſome, eſpecially of the weſtern gentlemen, who interpoſing, ſcreened both. Therefore, as it is an hard caſe that an upright magiſtrate ſhould ever be ſo expoſed, ſo it is a comfort that his ſincerity will create friends who unaſked, will ſhew themſelves in his favour: whereby the old ſaying is verified, viz. *Honeſty is the beſt policy.*

Account of the caſe of Cuts and Pickering.

This is one of thoſe capital cauſes, in which his lordſhip's ſingular application and ſagacity appeared: but I ſhall give an account of one more, which I think will fully anſwer my deſign. And that was the cauſe of Cuts and Pickering. Sir John Cuts, of Childerſly in Cambridgeſhire, had an aunt, one Mrs. Weld, who married Mr. Pickering, and, by his will, gave her an eſtate called Drayton, value 300l. per annum, for ninety-nine years, *if ſhe ſhould ſo long live.* Mr. Pickering, deſiring not to hang upon the thread of his wife's life for ſuch an eſtate, but to have it, for the term, abſolute, which is very near equal to the inheritance, thought fit to eraſe, from the

will theſe words of reference to her life. He had opportunity to do it; for he was made executor, and accordingly had the will in his keeping; which, in his good time, was proved and lodged in the prerogative office. The relations that were the heirs and deviſees of the capital eſtate and (among other things) of this (ſubject to Mrs. Pickering's life) were minors, and their affairs managed by their mother. I think the eldeſt of theſe, not long ſince, was made a peer, and was called my Lord Cuts. But his lordſhip's firſt acquaintance with the family went no farther than Sir John Cuts, and this Mr. Pickering and his wife. He was a ſubtile fellow, money hunter, but a great trifler, and very avaricious; but withal a mighty pretender to puritaniſm, and ſeeming to be more godly than other men. He uſed to frequent the Rolls chapel, and moſt buſily write the ſermon in his hat, *that he might not be ſeen.* And he uſed to viſit the Lord Chief Juſtice Hales; and by canting had perſuaded him he was a moſt religious man. He was not without ſuſpicion that ſome ſuits might be ſtirred, by the Cuts's againſt him, upon this will; and much dreaded a diſcovery of this raſure, (a guilty conſcience needs no accuſer) he was almoſt continually upon the watch, at the Temple and among the lawyers; ſometimes with one and then with another, eaves-dropping for intelligence,

but dropping no money; and for a whole term almoſt every day, at one time or other he called upon his couſin North (there was ſome relation, but remote, between him and Pickering's wife) thinking himſelf to be thereby privileged to be impertinent, with his importune queſtions whenever he pleaſed. He never had the civility to offer a fee, or to aſk his lordſhip to be of counſel with him in general, or particular, or on any account whatſoever. I remember one night his lordſhip came out from his ſtudy, having juſt parted from him, in a great pett, wiſhing heartily that his adverſaries would come and retain him, that he might ſhake off ſo troubleſome a fellow; and the next day Mrs. Cuts came, with much apology for her preſumption, in tendering a retainer in her cauſe againſt Mr. Pickering, fearing he might be under engagements to him. His lordſhip told her no, and took her fee, and wrote her down in his book of retainers, ſo ſhe went away ſatisfied: and well ſhe might, for that minute's work ſaved the eſtate. Pickering, that dogged this gentlewoman to ſee where ſhe went, perceived her go up to and return from his couſin North's chamber; and then he concluded ſhe was in earneſt, and up he goes, and offers his retaining fee; *no*, his lordſhip told him, *he was already retained on the other ſide*, and ſhewed him his book. His diſcourſe upon the matter ſignified no-

thing, he muſt have patience, and provide himſelf elſewhere. He might repent his neglect, but it was too late.

After this Mrs. Cuts came to his lordſhip in a very great concern, ſaying ſhe had very credible information that there was a foul raſure in Sir John Cuts's will, that in conſequence loſt Drayton, after Mrs. Pickering's death, from her (Mrs. Cuts's) children. His lordſhip immediately took coach, and went to Doctors Commons to view the original will. There he found the raſure moſt evident, and not done ſo carefully, but by the bottoms and tops of the long letters, and the diſtances that determined the intermediate ones the words, *if ſhe ſhould ſo long live*, might be read. Thereupon he took a paper, and made what they call a *fac ſimile* of the marks and diſtances of thoſe ſmall ſpecks as were not ſcraped out. Then his lordſhip called the officers, and ſhewed them the raſure and the marks, with the reſemblance he had made of them, and charged them all to take care that none ſhould ſee the will but in the preſence of an officer, for there would be a ſuit at law, to be determined upon view of that raſure. This matter being fixed, the lady went into Chancery, and having filed her bill for a diſcovery, Pickering anſwers fully, and denies the raſure, and at the hearing a trial was directed to be had, to find if this raſure was ſince the publication, and by

Diſcovery of a raſure.

whom. The cauſe came to be tried at the King's Bench bar, before the Lord Chief Juſtice Hales, and the reſt of the juſtices of that bench, and his lordſhip managed in chief for the Cuts's.

A trial at bar thereon.

It was then believed that Pickering had found means to inſinuate to the Chief Juſtice, that this was a malicious proſecution, and raiſed up againſt him by a pert young lawyer, of a different perſuaſion and tendency from him, but that he himſelf was innocent; but, however it happened, the chief juſtice took in violently on the ſide of Pickering, aſſuredly believing better of him than he deſerved. It is always an hard cauſe upon a lawyer, when he is to manage againſt the prejudice of a court, for what is to be ſaid or done, when preſumptions paſs on the one ſide, and the other ſide is held to poſitive proof, and no leſs than demonſtration? The chief juſtice was ſo very hard upon his lordſhip and his cauſe, that if there had not been an uncontroulable evidence of the fraud, the cauſe had miſcarried. But it happened that as his lordſhip upon the bench was going to direct the jury (as every one expected) to acquit Pickering, one of the counſel mentioned another witneſs they had to prove Pickering's own confeſſion, that when the will was firſt opened, thoſe words were in. The witneſs came in, and ſwore it poſitively. *Well*, ſaid the chief, *now you ſhall hear what Mr. Pickering will*

ſay to that. He thereupon being called came down into the court, and ſtood directly oppoſite to the witneſs that confronted him. *Now what ſay you to this?* ſaid the chief. *My lord*, ſaid he, *I was not bound to ſay what the truth was to him.* There was an inſtance of the value of face to face. The anſwer was ſo knaviſh and ſilly withal, that the chief juſtice let fall his countenance, and knocking his ſtick left the cauſe to the jury's cogniſance, without a word of direction given them one way or other; and they without going from the bar, found Pickering author of the raſure ſince the will publiſhed. Such cutting diſcoveries knaves will make of themſelves, when ſurpriſed and not allowed time to dreſs up their anſwers in the beſt accoutrements, eſpecially before ſagacious men. And none was ever more ſo than that famous chief juſtice, who although ſubject, as moſt mortal men are, to prejudices, yet upon a clear conviction, ſacrificed his propoſition to truth.

The Lord Chief Juſtice Hales, his great learning, failings, and the reſpect toward his lordſhip.

It was the Lord Keeper North's good fortune to enter his practice in the circuits under this judge, whoſe reputation for his great ability in the law, and rigorous juſtice, will be very long-lived in Weſtminſter Hall, and the Inns of Court and Chancery; for there was a conjunction of characters; his and the times conſpiring to aggrandize it. After having improved his knowledge, as a ſtudent, by reporting from him when he ſat

as judge of the Common Pleas, and as a practiſer in the Northern circuits, it ſo happened that, in the unaccountable rolling of preferments in the law, it became his lordſhip's province to judge of and, for cauſe apparent, to correct the errors of that great man. The truth is, his lordſhip took early into a courſe diametrically oppoſite to that approved by Hales: for the principles of the former, being demagogical, could not allow much favour to one who roſe a monarchiſt declared. Then, after the latter, by being made Chief Juſtice of the Common Pleas, together with the other judges of that court, and thoſe of the Exchequer, had juriſdiction of errors in judgment given by the court of King's Bench, the ſeparation was wider; and the old judge, by a certain formal overlooking of him, and refining of arguments againſt all he appeared for, affected to ſhew it. And to ſay truth, that judge had acquired an authority ſo tranſcendent, that his opinions were, by moſt lawyers and others, thought inconteſtable; and he was habituated in not bearing contradiction, and had no value for any perſon whatever that did not ſubſcribe to him. His lordſhip knew him perfectly well, and revered him for his great learning in the hiſtory, law and records of the Engliſh conſtitution. I have heard him ſay that, while Hales was chief baron of the Exchequer, by means of his

great learning, even againſt his inclination, he did the crown more juſtice, in that court, than any others, in his place, had done with all their good will and leſs knowledge. But his lordſhip knew alſo his foible, which was leaning towards the popular; yet, when he knew the law was for the king (as well he might, being acquainted with all the records of the court, to which men of the law are commonly ſtrangers) he failed not to judge accordingly.

His manner of behaviour at trials.

He was an upright judge, if taken within himſelf, and when he appeared, as he often did, and really was, partial, his inclination or prejudice, inſenſibly to himſelf, drew his judgment aſide. His bias lay ſtrangely for, and againſt, characters and denominations; and ſometimes, the very habits of perſons. If one party was a courtier, and well dreſſed, and the other a ſort of puritan, with a black cap and plain cloaths, he inſenſibly thought the juſtice of the cauſe with the latter. If the diſſenting, or anti-court party was at the back of a cauſe, he was very ſeldom impartial; and the loyaliſts had always a great diſadvantage before him. And he ever ſat hard upon his lordſhip, in his practice, in cauſes of that nature, as may be obſerved in the caſes of Cuts and Pickering, juſt before, and of Soams and Bernardiſton elſewhere, related. It is ſaid he was once caught. A courtier, who had

a cauſe to be tried before him, got one to go to him, as from the king, to ſpeak for favour to his adverſary, and ſo carried his point; for the chief juſtice could not think any perſon to be in the right, that came ſo unduly recommended.

His excellent expreſſion and ſeeming courage, that is, as to the court, but popularly timid.

He became the cuſhion exceedingly well: his manner of hearing patient, his directions pertinent, and his diſcourſes copious, and, although he heſitated often, fluent. His ſtop, for a word, by the produce, always paid for the delay; and, on ſome occaſions, he would utter ſentences heroic. One of the bankers, a courtier, by name Sir Robert Viner, when he was lord mayor of London, delayed making a return to a mandamus, and the proſecutor moved for an attachment againſt him. The recorder Howel appeared; and to avert the rule for an attachment, alledged the greatneſs of his magiſtracy; and the diſorder that might happen in the city, if the mayor were impriſoned. The chief juſtice put his thumbs in his girdle, as his way was, and, *tell me of the mayor of London?* ſaid he; *tell me of the mayor of Queenborough:* but ſtill this was againſt the court. he put on the ſhew of much valour, as if the danger ſeemed to lie on that ſide, from whence either loſs of his place (of which he really made no great account) or ſome more violent, or, as they pretended, arbitrary infliction might fall upon him. Whereas,

in truth, that ſide was ſafe, which he muſt needs know, and that all real danger, to a judge, was from the impetuous fury of a rabble, who have as little ſenſe and diſcretion as juſtice; and from the houſe of commons, who ſeldom want their wills, and, for the moſt part, with the power of the crown, obtain them. Againſt theſe powers he was very fearful; and one bred, as he was, in the rebellious times, when the government, at beſt, was but rout and riot, either of rabble committees, or ſoldiers, may be allowed to have an idea of their tyranny, and conſequently ſtand in fear of ſuch brutiſh violence and injuſtice as they committed. But it is pleaſant to conſider that this man's not fearing the court was accounted valour; that is by the populace, who never accounted his fear of themſelves to have been a mere timidity.

Whatever his courage or fear was, it is moſt certain his vanity was exceſſive; which grew out of a ſelf converſation, and being little abroad. But when he was off from the ſeat of juſtice, and at home, his converſation was with none but flatterers. He was allowed on all hands to be the moſt profound lawyer of his time; and he knew it: but that did not ſerve him, but he would be alſo a profound philoſopher, naturaliſt, poet, and divine, and meaſured his abilities in all theſe by the ſcale of his learning in the law, which he knew how to

Taken out of the law, an empty pretender, and by ſeverities unfortunate in his children.

value: and if he poſtponed any, it was the law to all the reſt; for he was ſo bizarr in his diſpoſitions, that he almoſt ſuppreſſed his collections and writings of the law; which were a treaſure, and, being publiſhed, would have been a monument of him beyond the power of marble. But, inſtead of that, he ordered them to be locked up in Lincoln's Inn library; and made no ſcruple to ſend forth little tracts in philoſophy, as the Non-gravitation of Fluids, *Difficiles Nugæ*, proſecuting the ſame *nugæ*, or trifles, upon the baroſcope; which made Sir William Jones ſay that his whole life (meaning in private, as I ſuppoſe) was, *nugarum plena*, or made up of trifles: his Origination of Mankind, in appearance, a great work, with nothing in it, and that which ſcarce any one ever read or will read. And what is very remarkable, the very childiſh ignorance of his ſubject, ſhewed in theſe books, is dreſſed in moſt accurate method, proper expreſſion, and ſignificant Engliſh ſtyle, better than which one would not deſire to meet with as a temptation to read. He publiſhed much in ſpeculative devotion, part proſe, part verſe: and the latter hobbled ſo near the ſtyle of the other, as to be diſtinguiſhed chiefly by being worſe. But his matter, and language not in rhyme, was pious and good. He took a fancy to be like Pomponicus Atticus, or one that kept above water in all times,

and well eſteemed by all parties. He publiſhed a ſhort account of that noble Roman's life, and, at the entrance, a tranſlation of the ſame in Cornelius Nepos; but ſo ill done as would have brought the rod over the back of a ſchool-boy. An hard cenſure without proof: Therefore take the following inſtances. 1.—*Et elatus eſt in lecticula;* which means that (after he was dead) *he was carried out upon a bier.* The word *efferre* is peculiarly proper in that place. But he rendered it *he was lifted up in his bed.* Then 2. —*Et ſic globus iſte conſenſionis, diſſenſione unius hominis, diſjectus eſt.* That is, *and ſo that confederated party was broke by one man's leaving them.* But he,—*and ſo that ball of contention, by the diſſent of one man, was let fall.* So miſerably will the learnedeſt men err that preſume out of their ſphere, and fail in that great point of wiſdom, the knowing one's ſelf. This great man was moſt unfortunate in his family; for he married his own ſervant maid, and then, for excuſe, ſaid there was no wiſdom below the girdle. All his ſons died in the ſink of lewdneſs and debauchery; and if he was to blame in their education, it was by too much of rigour rather than of liberty; which (rigour) Montagne ſays ſeldom fails of that conſequence. Although he was very grave in his own perſon, he loved the moſt bizarr and irregular wits, in the practice of the law before him moſt extravagantly. And beſides

he was the moſt flatterable creature that ever was known; for there was a method of reſignation to him, and treating him with little meals, and private, with his pipe, at eaſe, which certainly captivated him. So Sir George Jeffries gained as great an aſcendant, in practice, over him as ever counſel had over a judge. In ſhort, to give every one his due, there was in him the moſt of learning and wiſdom, joined with ignorance and folly, that ever was known to coincide in the character of any one man in the world.

His juſtice was moſt in ſmall, and his arbitrarineſs in great things. His extravagant authority cauſed his lordſhip's notes of him.

His lordſhip of whom I write, by his extent of bar practice, while he ſtood in the front, on the one ſide or the other, in moſt or rather every great cauſe that moved in Weſtminſter hall; had a full view of this great man, and very often obſerving him a ſlave to prejudice, a ſubtilizer, and inventor of unheard-of diſtinctions, and exerciſing criticiſms to get the better of known maxims of the law, and thereby to tranſmit great eſtates and intereſts from ſome perſons and families to others, and knowing well theſe infirmities of his was not moved at all at what he did. And this overruling temper of his did not ſo much take place in ſmall concerns, and in thoſe between common men; for there his juſtice ſhined moſt, and armed him with reputation that ſuſtained his authority to do as he pleaſed in greater. Whereby it ſeems that if he

never had dealt in other but great cauſes, to hear and determine them, he might have been accounted the worſt judge that ever ſat. But although his lordſhip was not ſurpriſed at this behaviour of the chief juſtice, yet he was very much concerned to ſee the generality, both gentle and ſimple, lawyers and laymen, idolize him, as if there had never been ſuch a miracle of juſtice ſince Adam. His voice was oracular and his perſon little leſs than adored. And his lordſhip knew alſo that this faſcination proceeded from faction, and had at the root more of conſederacy than judgment; for becauſe the chief juſtice was in principle, averſe to monarchy and the court, they all with one voice exalted him, in order to have him lead the law, and all the lawyers that way, and left no room for juſt thoughts of him, which attributed enough of honour and commendation, but all that he ſaid was right, and whoever ſaid to the contrary was wrong. In oppoſition to this impetuous, or rather rage of reputation (under which his lordſhip himſelf was a ſufferer, as may be ſeen elſewhere) his lordſhip thought fit to note down the ſeveral inſtances in his own obſervation of this judge's fondneſs and partiality; which he intended to have explained at large; when he was at leiſure, and ſhould have had a diſpoſition ſo to do. Theſe notes are come to my hand, and

being willing to declare the ſcope of them as well as I can, I will paſs them one by one as follows.

Noſworthy *verſus* Baſſet. Trials directed with all art and care yet ſlighted. } It is uſual indark matters of fact, to refer them to trials at common law, and a verdict upon one trial, is always allowed to be given in for good evidence upon any other trial of the ſame fact. Noſworthy had married a daughter of Serjeant Maynard, who urged very hard againſt Sir William Baſſet, an old cavalier or loyaliſt. There lay the characteriſtic. Care was taken to ſettle the iſſues for two trials ſucceſſive, and with all the art that might be, to give Noſworthy the advantage. If either of them had taken accordingly on his ſide, there was no doubt but the authority of them had been great in the conſequence of future proceedings; but it happened that both went for Baſſet. Notwithſtanding that, another trial was directed to be at the bar, before Hales himſelf; and when the authority of two verdicts was alleged, he ſlighted, and had no regard to them.

Noſworthy *verſus* Baſſet. Trials ſlighted when not for his turn.

Hyde *verſus* Emerton, marriage affectedly tried to prejudice an odious cauſe againſt right. } The principal depended in the court of the arches in a trial of marriage. And the queſtion was whether the ſon of the Lord Treaſurer Danby, or Mr. Emerton, a ſort of diſſenter, was married

Strove to prejudice an eccleſiaſtical cauſe by a temporal trial.

to Mrs. Hyde, the cauſe was wholly eccleſiaſtical, and from the arches muſt (upon appeal) go to the delegates, and could by no poſſibility be drawn from that juriſdiction to the common law, and all titles whatever under that marriage, muſt (even at common law) ſtand and fall by the ſentence in the eccleſiaſtical court. Emerton was adviſed to bring an ejectment for the lady's land, and to get that cauſe tried at the bar before Hales. It was alleged in delay of the trial, that the right of the marriage depended in the arches, and till ſentence the right could not appear at law; for that court was deciſive. The matter of delays in the arches was ſtood upon as a reaſon to proceed, and however anſwered upon the neceſſity by their courſe and rules, it paſſed and the trial went on. And it was managed by Hales with frequent exclamations at the clearneſs of Emerton's title, and proof of the marriage. The pinch was that, by the matrimonial law, fathers and mothers are not witneſſes to matches for preferment of children; but the common law allowed them: and in that lay the clearneſs. But it was thought that ſuch a trial, carried with the opinion of ſo popular a judge, would awe the eccleſiaſtical court, and ſo be of ſervice towards the ſuſtaining a cauſe grounded upon a very odious practice of Emerton to gain that lady. The characteriſtic of this cauſe was evident enough; and ſo it was in the

caſe of Soams and Bernardiſton; ſee the Examen. In that, Hales ſaid he would not try the cauſe before the Houſe of Commons had decided the right; but there the reaſon lay counter, as was ſhewed in that book.

Caſe of Mildenhall, ſided with the populace againſt the lord.

Caſe of Mildenhall Encount: act of parliament; otherwiſe in the caſe of the London judicatory. } I cannot well make out this compariſon; but only remember that the Mildenhall caſe was upon the title of Sir Henry North, lord of the manor, and a cavalier againſt the populace of the town, touching a right to an allotment upon the diviſion of the common fens, the townſmen diſtinguiſhed it from common, by calling it their *ſola & ſeparalis paſtura*. It was tried before Hales in the Exchequer; and in that caſe, he did not allow the ſentence of the commiſſioners to be concluſive; but upon the London commiſſion of ſettling rights after the fire, he ruled it was ſo, though both ſtood on equal height, viz. the act of parliament. That, as I take it, is the inconſiſtency here noted. But to do him right, though he leaned as much as he could to end the cauſe with advantage on the popular ſide, he never would ſay that ſuch a cuſtom to exclude the lord, who had no profit otherwiſe, was good in law; but rather the contrary. But here the lord of the manor had no benefit of his opinion; but for fear of worſe, was conſtrained to go off upon a reference; for the ill conſe-

quence, by offending if he refuſed, made the compliance neceſſary.

Ac etiams, in the Common Pleas, condemned, when uſed in the King's Bench, and the caſe but altered. } The ſecret of this matter depends on the hiſtory of the two courts, the King's Bench and Common Pleas, ſtriving for juriſdiction, or, rather, encreaſe of buſineſs; which will be found more largely treated of elſewhere. The court of Common Pleas had been outwitted by the King's Bench, till his lordſhip came upon the cuſhion; and that by an artifice in proceſs called *ac etiams*. His lordſhip uſed the ſame artifice in the proceſs of his court, where it was as good law as above. But Hales exclaimed againſt it, and called it altering the proceſs of law; which very ſame thing his own court had done, and continued to do every day.

Ac etiams, law in B. R. but not in C. B.

That juries cannot be fined for ſlighting evidence, and directions, contrary to reaſon, and the whole courſe of precedents. } This was popular, and the law ſtands ſo ſettled. The matter is truſt; whether the court or the jury. The court may abuſe a truſt in an undue puniſhment of jurymen, as in any other act of juſtice; and, on the other ſide, juries may abuſe their truſt; as, ſoon after, was done with a vengeance, in the ſcandalous inſtances of ignoramus juries. The precedents run all for the

Againſtfining of juries, againſt all precedents.

truſt on the ſide of the court, what reaſon to change it (which was changing the law) but popularity?

Foſter *verſus* Ramſay, againſt Lord —— upon a metaphyſical notion, hard to the party that loſt it. } This matter is ſomewhat dark to me, but if the caſe be any way reported, it may be cleared. I think the cauſe went againſt the Duke of Lauderdale, his majeſty's moſt loyal and wiſe commiſſioner of Scotland; where, upon a point of deſcent, the Lord Chief Baron Hales diſtinguiſhed away a right by deſcent, which had been ſettled by expreſs judgment of law, by the invention of a *meſium differens*, a chimera to ſerve a turn, without reaſon or authority to warrant it, and never heard of in the law before.

Affected applauſe of an evidence, before the other ſide heard.

The caſe of the Lord Fitzwalter, *pro* Burnam *verſus* Touts. } This was a trial for a ſeveral fiſhing of the river Burnham in Eſſex, which had been taken to have been a common fiſhing; but it was the title of the Lord Fitzwalter, whoſe name was Mildmay, a characteriſtic in Eſſex. The counſel for that lord made a long deduction of evidence by offices *poſt mortem*, charters, pedigrees, and diverſe matters of record. When they had done, the Lord Chief Juſtice Hales, who carefully went along with them from point to point of the evidence, inſtead of calling on the other ſide to give an anſwer, fell to eulogiſing the evidence given, calling it over

and over a noble evidence. This his lordſhip thought not the office of a judge, to commend an evidence before the other party was heard. It gave a prejudice with the jury; and what matter was it to the right, whether the evidence were noble or not? The countrymen, on the other ſide, by an ignoble preſcription, might have a better title.

Caſe of Sir William Drake, preſumptions, very ſtrong evidence prevailed till deed found, then deed prevailed, Earl of Peterborough had not thatgood fortune. — I have noreport and cannot accountfor Drake's caſe. Preſumptions for Sir William Drake, but not for Peterborough.

But remember a trial at the King's bench bar, between the Lord Peterborough and his brother the Lord Mordaunt, before the Lord Chief Juſtice Hales. The earl's title depended on a deed, of which only a copy could be produced, but it was very ſtrongly to be preſumed to be a true copy, for it had been delivered out to be peruſed by counſel, and admitted on all hands to be a true copy; and this long before any ſuch queſtion, as at the bar, could be dreamt of, above thirty years before; and it had remained in the gentlemen's hands ever ſince, as it was ſhewed, and unaltered. One would think after ſuch length of time and other circumſtances this might have been admitted as evidence of the deed: no, it was not proved expreſsly to have been examined with the original. But it ſeems in Drake's caſe,

preſumptions, or leſs evidence, in caſe the deed had never been found, would have done as well.

Countenanced marriages of quakers.

Marriage of quakers found ſpecially at Guildhall. } This was groſs in favour of thoſe worſt of ſectaries; for if the circumſtances of a quaker's marriage were ſtated in evidence, there was no colour for a ſpecial verdict; for how was a marriage by a layman without the liturgy, good within the acts that eſtabliſh the liturgy? The ſtur, in ſuch caſes, uſed to be this. In evidence a co-habitation, and owning the children as man and wife, paſſeth without entering into the queſtion of the right, that properly belongs to another juriſdiction. But here, though the right was debated, and could not be determined for the quakers, yet a ſpecial verdict upon no point, ſerved to baffle the party, that would take advantage of the nullity.

Soams and Bernardiſton tried at table, and they not anſwering ſlighted.

Soams *verſus* Bernardiſton, opinion aſked; but when he could not governaccording to his will, ſlighted, and went on. } This relates to his making that trial a table caſe in Serjeant's-inn-hall. The manner of it was this. When Mr. Attorney North moved to arreſt the judgment againſt Bernardiſton, with a vigour that needed ſome aid to repel, Hales, who was ſenſible that the objections were weighty, had a mind to implant his notions in the reſt of the judges, before whom it was

poſſible the cauſe might come, by writ of error, to be determined anew; for he could leaſt of any thing, bear that his judgment ſhould not prevail. And one day at dinner, when the cauſe was adjourned in Serjeant's-inn-hall, he put this caſe to his brethren the judges and ſerjeants preſent, and, as his way was, to his queſtions he annexed his reaſons before he took their anſwer; for thoſe reaſons might poſſibly lead them into his opinion: and then his ſentence in court had been adorned with the adjunct of the opinions of the ſerjeants bench; to whom (as ſometimes is done) the caſe had been put. But upon the proof, diverſe of the other judges and ſerjeants, were of an opinion different from his, and ſome doubted, and thought it a caſe that deſerved to be better conſidered, and very few were clear with him. Upon this diſappointment he thought fit to ſlight them all, and made no more words about it. Elſe their opinions had been quoted in court, or at leaſt, put under a prejudice againſt a writ of error ſhould come; of which Hales had a prophetic foreſight.

Atkins's caſe, whether a privilege the king had enjoyed for a hundred years, were a monopoly. Reverſed by parliament and liberty of arguing denied.

This was the caſe of the law patent by which the king's patentees claimed the ſole printing of law

Againſt the king's printers, for law books; ſet right in the Houſe of Lords.

books. This was by Hales, adjudged a monopoly. But upon a writ of error brought in parliament, the lords reverſed the judgment, without ſolemn argument. I remember about that time, it was commonly ſaid in Weſtminſter hall, that the beſt reaſon the judges had to make that patent a monopoly, was that they might have the benefit of printing their own reports.

Diſallowed Serjeant Scroggs the privilege of the Common Pleas.

Scroggs's caſe of ſerjeants in Common Pleas] Sir William Scroggs, when he was a practiſing ſerjeant, was arreſted by a King's Bench proceſs, and he pleaded his privilege as a ſerjeant at law, attendant on the Common Pleas, to be ſued only in that court, and by bill, and not *capias*, as officers of the court are proceeded againſt. But Hales diſallowed it, and it was thought very injurious to the coif, and againſt all authority of precedent and uſage.

Impoſed upon by a trick.

Succeſs of applications, on the contrary party.] This was touched before; and was when a courtier carried his cauſe by getting one, as from the king, to ſpeak to Hales as for his adverſary.

Proteſtation of the truth, and the neceſſity of the ſubject, and no envy.

Here I have done with this very great lawyer, the Lord Chief Juſtice Hales. And I muſt not part without ſubjoining my ſolemn proteſtation, that nothing is here ſet down for any invidious purpoſes, but merely for the ſake of truth; firſt, in general, for all truth is profitable; and, ſecondly, in particular, for juſtice to the character I

write of, againſt whom never any thing was urged ſo peremptorily as the authority of Hales, as if one muſt of neceſſity be in the wrong, becauſe another was preſumed to be in the right. Theſe two chiefs were of different opinions in matters of private right as well as touching the public. And if one were a Solomon, ſaint, and oracle, what muſt the other be taken for? therefore I have underſtood it abſolutely neceſſary for me, as (aſſiſted with his lordſhip's own notes) I have done, to ſhew Hales in a truer light than when the age did not allow ſuch freedom, but accounted it a delirium or malignancy at leaſt, not to idolize him: and thereby to manifeſt that he had his frailties, defects, prejudices, and vanities, as well as excellencies, and that he was not a very touchſtone of law, probity, juſtice and public ſpirit, as in his own time, he was accounted; but that ſome, that did not agree with him, might have thoſe virtues as eminently in the eye of a juſt obſerver This is the only conſideration that moved me ſo freely to diſplay the matters aforegoing, wiſhing only that I had means or ability, of doing it with more punctuality. I conclude with this obſervation, that it is a general error of the community, learned and unlearned, when a man is truly great in ſome capacities, by the meaſure of them to magnify him in all others, wherein he may be a ſhallow pretender. But it is the office

of a juſt writer of the characters of men, to give every one his due, and no more.

An eſtate recovered to St. Johnss college in Cambridge.

I ſhould earlier have mentioned a great piece of ſervice his lordſhip did to his college, that of St. John's, in Cambridge; whereby they were enabled to recover a conſiderable eſtate, which they had laboured in ſeven years ſuit for, and had been always baffled. It happened that when the fellows were about to give up the cauſe, and to look no more after it, it came into one of their heads to propoſe they ſhould make one experiment more, which was to conſult their little fellow commoner (as they uſed to call him) who after a circuit or two, and other dealings in the country, was reputed the hopefulleſt young lawyer in England. This was agreed to, and they went to him. The hiſtory of the cauſe was this. There was a grave old gentleman that had a title to an eſtate; but it was of that nature, as could only be recovered by a writ of right; and accordingly by advice of counſel, his writ was ſued out and the ſummons given. The defendant appeared, and pleaded to iſſue by battle (which law was then, and is yet in force, though obſoleted,) the conſequence of which was that the plaintiff muſt either fight, or find a champion to fight for him, or elſe his cauſe would be adjudged againſt him for his default, and he be barred for ever. The good man was of opinion, that it was utterly againſt

the law of God to join, or to hire any one to join, in mortal battle for worldly intereſts, and ſo he let his writ go. But in his laſt will (taking himſelf to have a right ſtill) he gave the land to St. John's college for ever. And he declared his gift to them to be, in truſt and confidence that they would uſe all their intereſts and endeavours, to obtain of the parliament a repeal of that ungodly trial by battle. After this will proved and known, the college went to counſel, and proved diverſe ways of law to come at this eſtate; but all in vain as was ſaid before. When they attended his lordſhip with their compliments of the great aſſurance of his ſkill and integrity in adviſing them, having been educated in their college, he told them plainly they had not taken one right ſtep; for as they had proceeded, the law was every way againſt them. But if they cauſed an information or bill in Chancery in the name of Mr. Attorney-General to be preferred, as for having the benefit of a pious and charitable uſe (in all which, the crown is intereſted, and may by the attorney in that manner, call for a due application of it) the court by virtue of an original juriſdiction of charities, will decree it, and no battle, nor other impedimental forms of law ſhall ſtand againſt that equity. They took the courſe he directed, and obtained a decree for the eſtate, which they

hold at this day, and have owned his lordſhip's good advice, to them as the greater benefaction of the two. This counſel, now would ſeem no great reach; becauſe that courſe is become more frequent: but, before that time it was a learning that lay out of the common road, and had been very rarely practiſed; and I preſume it might be gathered by his lordſhip, in his dealing under Sir Jeofry Palmer; for there is little directly in the books tending to it.

A good conveyancer.

I ſhall recite no more of theſe particular caſes, wherein his lordſhip ſignalized himſelf, but proceed to another head; and that is, conveyancing. I can with aſſurance, ſay, that he was no leſs expert, at that ſort of practice, than any one of his time, although profeſſing no other. And he diſpatched a great deal, eſpecially of the moſt intricate kind, that is, ſettlements in noble families who entirely relied upon him. And in theſe, are commonly found ſo many entails, truſts, terms, powers, jointures, rents, &c. that it is very difficult to clear the way to come at a new ſettlement; and then to compile it ſo as to anſwer all the ends, and exigences of the families, will always require a workman. But beſides his knowledge of the law, gained by reading, he had, as I muſt always remember, the benefit of many uſeful notions and hints from Sir Jeofry Palmer, not one iota of which was loſt upon him.

He had a comprehenſive turn of thought and a dexterous application of it to the ſubject before him; and he always crept as near to the truth of things as was poſſible, and as he had a great command of language and words, he had alſo a judgment to chooſe the moſt apt and intelligible, and withal a natural clearneſs of diſpoſition and method; all which as I ſaid, rendered him a conveyancer inferior to none. At the beginning of his buſineſs he had no clerk, and not only drew but engroſſed inſtruments himſelf, and, when he was in full practice, he ſcrupled not to write any thing himſelf. A lady in Norfolk told me he made up ſome agreements for her; and, at the ſealing, a bond was wanted, and there was no attorney, or clerk, at hand to draw it, ſo they were at a ſtand: and then he took the pen, and ſaid, *I think it will not foul my fingers if I do it myſelf*; and, thereupon he made the bond, and it was ſealed. I have often heard him complain of the community of the conveyancers, and ſay that ſome of them were pack-horſes, and could not go out of their road. After his bar practice grew up to engroſs his whole time, and the buſineſs of the crown in Weſtminſter Hall began to lean upon him, he only ſuperintended in the conveyancing province; leaving ſearches, peruſals, and extract making to others that he thought fit to recommend, and, after he had direct- Methods of diſpatch.

ed, took the finiſhing to himſelf. By this way of committing clients to certain practiſers, on whom he could rely for the working part, he helped them into credit and buſineſs; and particularly one Mr. Thomas Syderfin (an author of reports) was introduced, and, under his lordſhip, and in very important concerns, in ſome families, relied on.

Character of Mr. Syderfin. A ſtrange misfortune of his widow.

This Mr. Syderfin was a Somerſetſhire gentleman, and proved a very good lawyer, as the book, two volumes in folio of reports of his, ſhews. But he was not a better lawyer than a kind and good natured friend; having very good qualities under a ruſtic behaviour and more uncouth phyſiognomy. He uſed at the Temple to be deſcribed by his hatchet face, and ſhoulder of mutton hand, and he walked ſplay, ſtooping and noddling. His lordſhip uſed his converſation chiefly for his aſſiſtance in matters of law, wherein he was of great uſe and ſervice to him. For when his multiplicity of active buſineſs would not allow him to conſult in caſes that he wiſhed well to as well for friendſhip and relation as for fees, he uſually ſubſtituted Mr. Syderfin to conſult the books for him, as he himſelf had done before for Sir Jeofry Palmer. And this leading the perſons concerned to attend him by Mr. Attorney's direction, they, finding him induſtrious, careful, and learned, continued to uſe him as their immediate counſel in other ſmaller concerns,

wherein Mr. Attorney was not concerned; which brought him into very conſiderable buſineſs, as well in conveyancing as at the bar. For his probity, and exact juſtice to his clients, was a great recommendation of him; for he had no tenters to hang their dependences upon, to make them drop fat, as ſome have had and done. But he died before his friend Mr. Attorney was made the chief of the Common Pleas; elſe, it is probable he might, by his means, have been taken into the wheel of preferment. The only thing which I ever heard him blamed for, was the marrying a lady, that was his ward, before her minority was expired; which, by the world's allowance, makes her entirely capable to diſpoſe of herſelf. And it ſeems an ill uſe made of a truſt, and the authority of a guardian, to take advantage of a minor's being a great fortune much above him, and anticipate her free choice, by influencing her to marry him. But the lady had no cauſe to repent; for he was ſo good a man, as could not but make her happy; and that probably, young as ſhe was, ſhe was ſatisfied of, by experience of his general behaviour towards her and others; which might make her determine ſo early. For ſhe had a very good underſtanding, and had occaſion to ſerve herſelf of all her thinking and judgment under an immenſe misfortune that befel her when ſhe was a widow. For, being a great for-

tune, one Sarsfield ran away with her, and carried her over into France, where, by the greateſt accident, the abuſe was diſcovered, and the raptor ſeiſed, ſhe protected, and both ſent home; and the former, upon her moſt ingenious relation of the fact, ſworn in a trial at the King's Bench bar, convict and puniſhed.

Aſſiſted a relation.

His lordſhip, having taken that advanced poſt, and deſigning to benefit a relation, (the honourable Roger North,) who was a ſtudent in the law, and kept him company, cauſed his clerk to put into his hands all his draughts, ſuch as he himſelf had corrected, and after which conveyances had been engroſſed, that, by a peruſal of them, he might get ſome light into the formal ſkill of conveyancing. And that young gentleman inſtantly went to work, and firſt numbered the draughts, and then made an index of all the clauſes, referring to that number and folio: ſo that, in this ſtrict peruſal and digeſtion of the various matters, he acquired, not only a formal ſtyle but, alſo apt precedents, and a competent notion of inſtruments of all kinds. And to this great condeſcenſion was owing that little progreſs he made, which afterwards ſerved to prepare ſome matters for his lordſhip's own peruſal and ſettlement.

Happily corrected his father's ſettlement and will.

It fell out that his lordſhip, by a caſt of his ſkill in this kind, prevented his father's being utterly diſappointed of the effect in-

tended by his laſt will: for the good lord had the general notions of the law, as many others have; who nevertheleſs, coming to the execution of buſineſs, blunder moſt abominably. And it is very ſtrange, but very true, that if a layman (as the lawyers ſtile thoſe not bred to the profeſſion) ſtudies the law never ſo hard, and purſues in a courſe of reading and common placing with all imaginable perſeverance, yet he ſhall be far from competent to judge of, or capable to direct in buſineſs. So this good nobleman, intending to give his lady all his perſonal eſtate, free from debts and legacies, and to charge thoſe upon his land and (ſubject, &c.) to ſettle it ſtrictly upon his family, had contrived thus. He made his wife his executrix, and charged debts and legacies upon the land, and limited it eſpecially on his ſons and their iſſue male ſucceſſively, without truſtees to ſupport, &c. When this was done, he bethought himſelf that, however in prudence it did not become him to truſt his nimble young lawyer to draw his will, and ſo give him an opportunity to ſteal in ſomewhat for himſelf, unawares to him, yet, after the will was made, he ought not to ſecrete it from ſo great a lawyer as he was. And thereupon he ſent for him, and, with a ſpeech, let him know that however (for reaſons that ſatisfied himſelf) he was not conſulted in the making his will, yet now he ſhould ſee it. But he muſt

not expect to alter one tittle, or ſyllable in it; for he had conſidered it ſo well that he ſhould not need, if he were diſpoſed to truſt, his advice. His lordſhip peruſed it over, and his father aſked him how he liked it. He anſwered with a queſtion, whether he intended that Lady North ſhould have any thing of his perſonal eſtate, or nothing. *I intend her all, and have,* ſaid he, *given it her by making her ſole executrix.* That was his ſkill. But the lawyer told him *that would not do, but only in caſes where no debts were: And charging his land did not eaſe his perſonal eſtate, unleſs it were made an expreſs legacy, with a declaration to exempt it. For the heir had an equity to turn all debts upon the perſonal eſtate in caſe of the land; and the latter ſhould not be charged till the other was exhauſted.* This was news to the lord, and made him ſtart. Then the lawyer aſked farther, if it was his intent that any of his ſons might ſell his eſtate, and fruſtrate their own children, and the reſt of his remainders. *No,* ſaid he, *I intend none of them ſhall ſell. But here they may,* ſaid the lawyer, *for the remainders to ſons, before any born, are contingent; and a feoffment, or fine of the tenant for life, deſtroys the contingencies, and his eſtate becomes a fee ſimple.* Theſe diſcoveries made ſuch an impreſſion upon the ſpirits of the old lord, that he ſaid, *Son, you ſee my intent, go and make it as it ſhould be.* Which was done, and, as things fell out in that family, that

action of his lordſhip's was a preſervation of the eſtate, and prevented the good old lady from being left deſtitute; who otherwiſe, had been left without a bed to lie on, but what ſhe muſt have purchaſed by anticipating her jointure. So it is when men will purſue in profeſſions they were not educated in.

We have now from a plain king's counſel, got a ſolicitor general, who, in ſome reſpects, is co-ordinate with the attorney, that is in drawing up and paſſing royal grants, which are to go to the great ſeal. As to patents of honour, indeed, thoſe are, as I take it, claimed by the attorney, to paſs only by him; but, elſe, the ſignet warrant may go to the ſolicitor as well as the attorney, as the ſuitor will pleaſe to inſtance or prevail at the ſecretary's office. His lordſhip did not like this competitory buſineſs, but ſecured his ſhare as well as he could, not only by conſidering well his duty, and the truſt of that employment, and what cares belonged to it, but by uſing Mr. Johnſon to be his clerk of the patents, who had done all like buſineſs under Sir Jeofry Palmer: and his reputation and intereſt brought many patents to the ſolicitor, which, otherwiſe, had not come; for he was reputed to have a magazine of the beſt precedents. His behaviour while ſolicitor general.

During his ſolicitorſhip, his lordſhip kept his public reading in the Temple hall, in the autumnal vacation, in the year ——. He Read publickly upo fines, &c.

took for his ſubject the ſtatute of fines, and, under that, found means to exhauſt all his learning upon that branch of the law which concerned titles, and the transferring them: and the arguers againſt him did their parts alſo, who were the beſt lawyers of the ſociety in that time. As for the feaſting part it was ſumptuous, and, in three or four days time, coſt one thouſand pounds at leaſt. The grandees of the court dined there, and of the quality (as they call it) enough; for his diffuſed relation, general acquaintance and ſtation, as well as proſpect of his advancing in the king's ſervice, made a great rendezvous of all the better ſort, then in town, at his feaſts.

Manner of the entertainment.

He ſent out the officers with white ſtaves (for ſo the way was) and a long liſt to invite; but he went himſelf to wait upon the archbiſhop of Canterbury, Sheldon; for ſo alſo the ceremony required. The archbiſhop received him very honourably, and would not part with him at the ſtair's head, as uſually had been done; but, telling him he was no ordinary reader, went down, and did not part till he ſaw him paſs at his outward gate. I cannot much commend the extravagance of the feaſting uſed at theſe readings; and that of his lordſhip's was ſo terrible an example, that I think none hath ventured ſince to read publicly; but the exerciſe is turned into a revenue, and a compoſition is paid into the treaſury of the

ſociety. Therefore one may ſay, as was ſaid of Cleomenes, that, in this reſpect, his lordſhip was *ultimus heroum*, the laſt of the heroes. And the profuſion of the beſt proviſions, and wine, was to the worſt of purpoſes, debauchery, diſorder, tumult, and waſte. I will give but one inſtance; upon the grand day, as it was called, a banquet was provided to be ſet upon the table, compoſed of pyramids, and ſmaller ſervices in form. The firſt pyramid was at leaſt four foot high, with ſtages one above another. The conveying this up to the table, through a croud, that were in full purpoſe to overturn it, was no ſmall work: but, with the friendly aſſiſtance of the gentlemen, it was ſet whole upon the table. But, after it was looked upon a little, all went, hand over head, among the rout in the hall, and, for the more part, was trod under foot. The entertainment, the nobility had out of h is, was, after they had toſſed away the diſhes, a view of the croud in confuſion, wallowing one over another, and contending for a dirty ſhare of it.

The benefit of reading exerciſes.

It may be ſaid this was for want of order; but, in truth, it was for want of a regular and diſciplined guard of ſoldiers; for nothing leſs would keep order there. I do not think it was a juſt regulation, when, for the abuſe, they took away ſuch a profitable exerciſe. But, in England, it is a common way of reforming, even in ſtate matters, inſtead of

amending, or paring away, what is amiſs, to kick down whole conſtitutions, all at once, however, in themſelves, excellent. Could not the whole propoſition of feaſting have been laid aſide, and nothing but ordinary commons allowed? But, as to the exerciſe, now it is gone, we can ſee the want of it; and never more want than now, when ſtatutes of broad influence upon the people's concerns, are ſo frequently ſent out from the parliament. It was the deſign of theſe readers to explain to the ſtudents the conſtructions that were to be made upon new ſtatutes, for clearing a way that counſel might adviſe ſafely upon them. And the method of their reading, was to raiſe all imaginable ſcruples upon the deſign, penning, and ſenſe of ſuch new acts as they choſe out to read upon, and then to give a careful reſolution of them; as we may ſee done in thoſe readings that are in print. But now there is ſcarce a lawyer ſo hardy to adviſe a client to try a point upon a new ſtatute, whereof the event is at the peril of coſts, and ſometimes ruin of a poor man that pays for the experiment; for how can the counſel foreſee the judge's ſentiments? And how contrariant to his advice they may prove? As, for inſtance, upon the law of diſtreſs and ſale for rent, ſome have ſaid it is to deveſt property, and, ſo far, in nature of a penal law, and ought to be conſtrued ſtrictly. Others have ſaid it is a remedial law,

and ought to be enlarged by conſtruction. And who doth not know the wide difference in the conſequences of law, in ſome points, upon theſe various grounds of conſtructions? Now, if a previous reading had been had upon this ſtatute, ſaving better judgments, it had been declared a remedial law, and to be conſtrued in favour of remedy. And, probably, a ſingle judge, at the aſſiſes, would not have oppoſed his ſentiment againſt the learned determination of a reader, ſo ſolemnly and publickly held forth (as, at theſe exerciſes, in the inns of court is done) which counſel at the bar, in nice queſtions at law, are allowed to appeal to for authority. But, as the caſe is now, till ſome hardy client hath puſhed his point, upon ſome new proviſionary law, to a trial, and obtained a reſolution on his ſide; or elſe, to his immenſe coſts (which properly converts it to a penal law) finds that he is in the wrong, counſel care not to adviſe a law ſuit, or give a clear or poſitive opinion in any queſtionable matter, ariſing upon ſuch a new law.

Of his lordſhip's marriage.

It may be wondered at, that, as is lordſhip was ſo great a lover of regularity, we hear nothing all this while of his matching himſelf. To that I anſwer, that no perſon could be more diſpoſed that way than he was; and it was about this time that he made his firſt eſſays towards it; and, for

that reaſon, I think this a proper place to bring forward an account of them, as I intend to do of all his lordſhip's concerns and reflections, as well of thoſe in which himſelf alone was intereſted, as others which might affect and influence the public; ſuch as matching, reſidences, fortunes, entertainments, reflections, doubts, melancholies, confidences, with his arts of governing himſelf and his paſſions. And although I may by this means introduce many paſſages, which, to ſome, may ſeem of lower importance than what are proper to have place in a life of ſo great conſequence, yet I am almoſt of opinion, that moſt perſons will look into ſuch a catalogue as readily as any other in the whole undertaking. If the hiſtory of a life hangs altogether upon great importances, ſuch as concern the church and ſtate, and drops the peculiar œconomy and private conduct of the perſon that gives title to the work, it may be an hiſtory, and a very good one; but of any thing rather than of that perſon's life. Some may think deſigns, of that nature, to be, like the plots of Mr. Bays, good only to bring in fine things: but a life ſhould be a picture; which cannot be good, if the peculiar features, whereby the ſubject is diſtinguiſhed from all others, are left out. Nay, ſcars and blemiſhes, as well as beauties, ought to be expreſſed; otherwiſe, it is

but an outline filled up with lilies and roſes. And, to this intent, what I have to produce here, will be found more conducing than all the incidents of ſtate, law, and juſtice, to be found in the other parts of the work; and that will engage me to be more ſolicitous and declaratory than elſewhere.

Deſired a ſettlement by a match, and the inducements.

After he was called to the bar, he applied himſelf cloſely to the attendance and operations of the law, and wanted refreſhment, ſuch as was reaſonable to be enjoyed at vacant times; and he was weary of being at the looſe hand as to company, which he could not have, at all times, to his mind. He was no clubſter, liſted among good fellows; and often paſſed his evenings in walking, or ſolitary (if it may be ſo termed, when he had only me with him) rather than join in any promiſcuous ſociety, or of ſuch as were not either in his friendſhip, or diſtinguiſhed by ſome notable talents that recommended them. And he thought it would be an eaſe to his mind to know continually, after his buſineſs done, what was to become of him; and that he thought beſt provided for by a family and houſekeeping; which is never well ſettled without a miſtreſs, as well as a maſter of a family. Theſe conſiderations inclined him to look out for a ſuitable match. And, to ſay truth, his conſtitution required it as much as any man's whatever; but, being exceſſive modeſt, and by reſolution virtuous, he was ſolicitous and ardent

in the purſuit of it, and not a little encouraged by a manifeſt feeling he had of ſucceſs in his profeſſion, which diſmiſſed all fears of the lean wolf. And not being inſenſible of a fair character in general, which, together with ſome quality and happy relation that fell to his ſhare, he fancied he might pretend to as good a fortune in a match, as many others had found, who had leſs reaſon to expect it; but without ſome advancement in that way, he was not diſpoſed to engage himſelf.

A match propoſed, but without ſucceſs.

That, which ſat hardeſt upon his ſpirits, was, how he ſhould give a fair anſwer to the queſtion, *What jointure and ſettlement?* He uſed to own but one rood of ground in the world, that yielded him any profit, which was Weſtminſter Hall: a meagre particular, unleſs he might have added, as Finch did, his bar gown 20,000*l.* There came to him a recommendation of a lady, who was an only daughter of an old uſurer of Gray's inn, ſuppoſed to be a good fortune in preſent, for her father was rich; but, after his death, to become worth no body could tell what. His lordſhip got a ſight of the lady, and did not diſlike her: thereupon he made the old man a viſit, and a propoſal of himſelf to marry his daughter. There appeared no ſymptoms of diſcouragement; but only the old gentlemen aſked him what eſtate his father intended to ſettle upon him for preſent maintenance, jointure, and proviſion

for children. This was an inauſpicious queſtion; for it was plain that the family had not eſtate enough for a lordſhip, and none would be to ſpare for him. Therefore he ſaid to his worſhip only. *That when he would be pleaſed to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with his anſwer.* And ſo they parted, and his lordſhip was glad of his eſcape, and reſolved to give that affair a final diſcharge, and never to come near the terrible old fellow any more. His lordſhip had, at that time, a ſtout heart, and could not digeſt the being ſo ſlighted; as if, in his preſent ſtate, a profitable profeſſion, and future hopes, were of no account. If he had had a real eſtate to ſettle, he ſhould not have ſtooped ſo low as to match with his daughter; and thenceforward deſpiſed his alliance.

Counted a widow, and was little better than jilted.

His lordſhip's next amour was, in all reſpects, better grounded; but, againſt all ſenſe, reaſon, and obligation, proved unſucceſsful. When Mr. Edward Palmer, his lordſhip's moſt intimate and dear friend, died, he left a flouriſhing widow, and very rich. The attorney general, and all his family, had projected a match of their couſin North with this lady, who were no ſtrangers to each other: nor was there wanting ſufficient advices, or, rather importunities, of the whole family, for her to accept him; againſt which ſhe did

not ſeem to reluct, but held herſelf very reſerved. In the mean time, his lordſhip was excited to make his application; which he had never done, or, at leaſt, not perſiſted ſo long as he did, but out of reſpect and compliance with the ſenſe of that worthy family, which continually encouraged him to proceed. Never was lady more cloſely beſieged with wooers: ſhe had no leſs than five younger brothers ſat down before her at one time; and ſhe held them in hand, as they ſay, giving no definitive anſwer to any one of them, till ſhe cut the thread, and, after a clancular proceeding, and match with a jolly knight of a good eſtate, ſhe dropped them all at once, and ſo did herſelf and them juſtice. There were many comical paſſages in this wooing, which his lordſhip, without much pleaſantry, uſed to remember; and, however fit for a ſtage, would not muſter well in an hiſtorical relation; for which reaſon, as his lordſhip was dropped, I drop them. The unhappineſs was, that he never could find out her reſolution as to him; for ſhe ſtood in ſome awe of Sir Jeofry Palmer's family, and would not break with them, till ſhe had provided for herſelf another intereſt; and his lordſhip would not ſlight their exceſſive kindneſs to him, by deſerting his poſt at which they had placed him: ſo, between the one and the other, he was held at the long ſaw above a month, doing his duty as well as

he might; and that was but clumſily, for he neither dreſſed nor danced, when his rivals were adroit at both; and the lady uſed to ſhuffle her favours amongſt them affectedly, and on purpoſe to mortify his lordſhip; and, at the ſame time, be as civil to him, with like purpoſe to mortify them: and his lordſhip was not ſo miſtified, by his amour, as not to diſcern theſe arts; and nothing, but the reſpects I hinted, could have held him in harneſs ſo long. For it was very grievous to him that had his thoughts upon his clients' concerns, which came in thick upon him, to be held in a courſe of bo-peep play with a crafty widow. And I have heard him often ſay, that he never was in all his life, more rejoiced, than when he was told that madam was married; whereby he was eſcaped from a miſerable confinement. And the faſtidium, upon this occaſion contracted, and his increaſe of buſineſs, which gave him little time to think of any thing elſe, diverted his mind from undertaking any more ſuch projects; and ſo he went on his way.

An advantageous offer, upon diſguſt, rejected.

Another propoſition came to his lordſhip, by a city broker, from Sir John Lawrence, who had many daughters, and thoſe reputed beauties; and the fortune was to be 6000*l.* His lordſhip went and dined with the alderman, and liked the lady, who (as the way is) was dreſſed out for a muſ-

ter. And coming to treat, the portion ſhrank to 5000*l.* and, upon that, his lordſhip parted, and was not gone far before Mr. Broker (following) came to him and ſaid, Sir John would give 500*l.* more, at the birth of the firſt child; but that would not do, for his lordſhip hated ſuch ſcrewing. Not long after this diſpatch, his lordſhip was made the king's ſolicitor general, and then the broker came again, with news that Sir John would give 10,000*l.* No; his lordſhip ſaid, *after ſuch uſage, he would not proceed, if he might have* 20,000*l.* So ended that affair; and his lordſhip's mind was once more ſeated in tranquillity.

Chance produced a glorious propoſition (which ſucceeded) with Lady Frances Pope.

It is ſaid that marriages are made in heaven; and if frequent and unforeſeen accidents (often to be obſerved productive of them) are any argument, the proverb hath countenance; for ſo it happened in his lordſhip's caſe: for, out of a contingent interview, a propoſition ſprang, pregnant with all advantages of honour, perſon, and fortune; more than which was not to be deſired or expected. And it was for a match with the lady Francis Pope, the middle daughter of three coheirs of Thomas Earl of Down, who lived at Wroxton in Oxfordſhire. The eldeſt was married to Mr. Soums, of Thirlow in Suffolk, within four miles of Catlidge, the ſeat of his lordſhip's father. And, as the uſe is, the grave counteſs of Down, with her two younger daughters, attended the new-mar-

ried couple to their habitation, and made ſome ſtay there; during which time the viſits of joy came in, and, amongſt the reſt, the family from Catlidge made their appearance; and the counteſs, and her daughters, in due time, made their return, which happened to be at a time when his lordſhip was at Catlidge. His mother laid her eyes upon the eldeſt unmarried daughter, and, when they were gone, turned about and ſaid, *Upon my life, this lady would make a good wife for my ſon Frank.* And, in ſhort, at the next viſit, with his lordſhip's fair conſent, ſhe moved it to the counteſs, who conſented that his lordſhip might make his advances. His next buſineſs was to muſter what ſums of money he could, in order to make an honourable propoſition; and, with 600*l.* borrowed of a friend, he could compaſs but 6000*l.* in all to join to her fortune, which was eſteemed at 14,000*l.* for making the jointure and ſettlement intended to be 1000*l.* per annum. After this, he ventured down with a decent equipage and attendance, and, in leſs than a fortnight, fixed his point with the lady, and appointed another time to come and finiſh what was ſo auſpiciouſly begun. And then his lordſhip went with full attendance, and ſome friends; and, after the neceſſary writings were ſealed, the lovers were happily married in Wroxton church. But I well remember the good counteſs had ſome qualms, and complained that ſhe

knew not how ſhe could juſtify what ſhe had done (meaning the marrying her daughter with no better ſettlements; *Madam* ſaid his lordſhip, *if you meet with any queſtion about that, ſay that your daughter has* 1000*l. per ann. jointure.* It is certain that (beſides ſome private reaſons the counteſs might have) the friends of the family looked upon this as a very deſirable match, not on account of an eſtate in preſent, but of much greater, little leſs than certain, to come; for his lordſhip was ſolicitor-general; and I may ſay a favourite of the law, and his character unexceptionable, beſides his family, which was ſtyled honourable.

Much rejoicing at the wedding, ſeparate maintenance not inſiſted on.

It is not eaſy, nor very material, to deſcribe the feaſting and jollities, that were in the country round about, upon this occaſion. It was a cavalier country, and the Popes eminent ſufferers for their loyalty in the late wars: and his lordſhip having the like character, and known to be an obliging, as well as a flouriſhing, loyaliſt, there was ſcarce a family which did not ſhew all reſpect imaginable to the new-married folks, by viſits, invitations, and feſtival rejoicings. So that it was about three weeks before his lordſhip could clear himſelf of theſe well-intended importunities. At length we decamped for London; and his lordſhip took firſt, lodgings, and then an houſe, and lived, conſiſtent with his buſineſs, in a way moſt agreeable to him. It was wondered that this lady, being ſuch a fortune, had no ſe-

parate maintenance aſſigned her. I believe the true reaſon was that, conſidering his lordſhip's known good-nature and honour, they thought there would be no need of it, and it would, as a diſtruſt, have diſobliged him to have mentioned it; and I am, partly certain he would not have agreed to it: and, in the ſame family, the younger ſiſter was matched with a large ſeparate maintenance. And, to ſhew how little ſuch proviſions (except in extreme caſes, the ſuppoſition of which, almoſt in poſſibility, is ſufficient to divert a match) ſignify; a lady, though ſuffering in her perſon for want of reaſonable ſupplies, never profited the leaſt by it; but, upon expoſtulation, the anſwer was, *Get you to your truſtees.* But, for certain, the Lady Francis Pope was matched into the land of plenty; and, in ſaying that, I have ſaid all.

Great loſs by a compoſition.

Theſe ladies fortunes conſiſted in eſtates of inheritance, come to them by deſcent, as coheirs under certain ſettlements in the family, to be made good by a due execution of ſeveral fines and recoveries formerly had. The Lady Eliz. Lee ſet up a pretence againſt them, as heir general, let in by failure of iſſue male; and ſuits being commenced, and ready for trial, his lordſhip, being then counſel for the Lady Lee (thoughtleſs of his future concerns) was at a conſult preparatory to a trial the next day, which was to determine, once for all, whether theſe ladies ſhould be great fortunes, or worth

nothing at all; and perhaps, be found in debt for their charges and living in the interim. And the whole board (as I may call it) agreed in opinion that their client, the Lady Lee, had no title at all. But the truſtees for the ladies were towards the law; and, being wonderfully ſcrupulous, had a different notion, and, conſidering the conſequence, that might be fatal to the ladies, adviſed a compoſition; and in the morning before the trial, attended her ladyſhip to know her pleaſure; and ſhe furiouſly proteſted ſhe would have half. This was a ſevere ſentence, but yielded to; and, afterwards, the eſtates, ſubject to this queſtion, were ſold, and the money divided, of which his lordſhip came into his wife's part: and he uſed merrily to ſay, *He had been a counſel againſt himſelf.* And if this queſtion had not come to ſuch a compoſition, which diminiſhed the ladies fortunes, he had never compaſſed his match.

His lordſhip's œconomy; and, by his ſervants account, obviated a fraud.

His lordſhip, by the means of his brother-in-law, Mr. Robert Hyde, ſettled himſelf in the great brick houſe near Serjeant's inn in Chancery lane, which was formerly the Lord Chief Juſtice Hyde's; and that he held till he had the great ſeal, and ſome time after. And when he came to ſettle in this houſe, he conſidered his œconomy, and what method to put it in: he appointed his truſty clerk in chief to pay all bills weekly, and keep all his expenſive accounts. This gentleman,

not only kept his books fair but, had vouchers to every item. And it was well for his lordſhip that he did ſo; for one Branſby, an upholſterer, brought in a bill of 200*l.* for furniture ſupplied two years before; excuſing himſelf, that he knew his lordſhip's pay was good, and, not needing the money, he was content to let it lie in his hands. His lordſhip believed he was paid; but that was no anſwer, ſo referred him to his clerk, who, looking back, found his bill, and the acquittance in full. Then, *good lack! his man had forgot to cancel his book.* He ſuppoſed that his lordſhip had not ſuch regular accounts; and, then tradeſmen take the advantage, and are paid double.

Well ſettled; Serjeants Inn Hall built, and a common ſhore made.

When his lordſhip lived in this houſe, before his lady began to want her health, he was in the height of all the felicity his nature was capable of. He had a ſeat in St. Dunſtan's church, appropriated to him, and conſtantly kept the church in the mornings. He had the eſteem of the royal family, and of all the loyal and conformable people in the nation. His houſe was to his mind; and, having, with leave, a door into Serjeants-inn garden, he paſſed daily with eaſe to his chambers, dedicated to buſineſs and ſtudy. His friends he enjoyed at home; but formal viſitants and politicones often found him out at his chambers. Thoſe were proper and convenient for all his purpoſes; but the aſcent to them was bad:

and, being ſcandalized at the poorneſs of the hall, which was very ſmall, and, withal, ruinous, he never left till he brought his brethren to agree to the new building of it; which he ſaw done with as much elegance and capacity, as the place would admit of, and thereby gained a decent avenue, with ſtone ſteps, to his chamber, as may be ſeen at this day. His lordſhip procured to be done another good work, which exceedingly improved the dwellings, in all Chancery lane, from Jackanapes alley down to Fleet ſtreet. He found in his houſe a ſmall well in the cellar, into which all the draining of the houſe was received; and, when it was full, a pump went to work to clear it into the open kennel of the ſtreet. But, during this pumping the ſtench was intolerable, and offended, not only his lordſhip, but all the houſes in the ſtreet, and alſo paſſengers that paſſed to and fro in it. And other houſes there, which had any cellars, were obnoxious to the ſame inconveniences. His lordſhip propoſed to them to join in the charge of making a drain, or ſewer, all along the ſtreet, deep enough to diſcharge into the grand common ſewer in Fleet ſtreet. The inhabitants would not join, alledging danger to their houſes, and other frivolous matters, and thereupon his lordſhip applied to the commiſſioners of ſewers, and obtained a decree, by virtue of which it was done whether they would or no, and the

charge paid by a contribution levied upon them; and then they thanked his lordſhip, as for a ſingular good done them. Which is an inſtance ſhewing that the common people will be averſe to their own intereſt, till it is forced upon them; and then be thankful for it.

His lady's ſickneſs.

But amidſt all theſe comforts, his lordſhip's happineſs was not a little curtailed by the bitterneſs poured into his cup from his lady's ſickneſs, which began about the year 1674, and, at laſt, brought her to her grave; for he had ſo much good nature as to reſent all her pains as if they were perſonally his own. Of all the three daughters of the Counteſs of Down, ſhe had the leaſt good health; but, about the time of her match, ſhe was very flouriſhing and well.

Removed to Hammerſmith, thence to Wroxton and there died.

When this lady began to appear infirm, his lordſhip, for the advantage of better air, which was thought beneficial for her, took a country houſe in Hammerſmith, where, in the mild times of the year, ſhe reſided. And he came to her every evening, and repaired to London in the morning, as his buſineſs required. And, in his circuit time, he left her there with all fitting company and attendance. But her diſtemper, which was a violent cough attended with a ſpitting of blood, that followed upon the abatement of an acute fever ſhe had had but juſt before, proceeded from bad to worſe; and at length, his lordſhip went with her to

Wroxton, and, ſaving the neceſſary attendances at London, was continually with her. There wanted not doctors and apothecaries in thoſe parts. She had Dr. Triſs, a neighbour, and Dr. Danvers, from Northampton, almoſt continually with her. But the diſtemper exaſperated, till it was manifeſt, ſhe could not laſt many weeks, and ſoon after, a large blood veſſel being broke by a violent fit of coughing, it carried her off. It was his lordſhip's good ſtars that forced him to London about a fortnight before ſhe died; for every one knows what offences, nay hazards, a nearneſs to perſons, that expire gradually in ſuch conſumptions, induceth; for he would not be abſent from her more than was conſiſtent: and when ſhe muſt expire, and probably, in his arms, he might have received great damage in his health.

Her funeral and monument.

After this good lady was dead, care was taken (in his lordſhip's abſence) for her interment, which was performed in the chancel of Wroxton church, near the reſt of her family, with attendance and in manner honourable, and according to her quality. His lordſhip ordered a black marble ſtone to be laid upon the place, and, afterwards, a monument of white marble to be put in the wall, being an oblong ſemium upon a large face of a cube, with this inſcription compoſed by Dr. Henry Paman ſome time orator of the univerſity of Cambridge, who

was, not only writer, but (knowing her well) a witneſs of what he penned, viz.

Diem hic denuo oriturum & decretorium
Præſtolatur lectiſſima Fœmina Domina FRANCISCA
Illuſtriſſimi Domini FRANCISCI NORTH *Equit. Aurat.*
Capitalis communium Placitorum Juſt. Uxor.
Magna & inclyta utroque Parente,
Patre THOMA *Comite apud Hybernos Dunenſi,*
Matre Filia HENRICI POOL *in Agro Gloc. Baronetti,*
Fratre itidem THOMA *Comite pariter Dunenſi,*
Eoque defuncto cum duabus ſororibus Cohæres,
Virtute tamen longe ditior quam Dote,
Utpote cui Pietas ſine Fuco, Gravitas ſine faſtu,
Sine Levitate Comitas, & grata ubique Amœnitas,
Modeſtia autem & Pudicitia etiam in Uxore Virginalis.
Lentâ hic Ægritudine detenta quaſi tremula penſitabat
An potius præmiſſis Liberis POPIO *&* FRANCISCA
Se denuo ſtatim adjungeret, an tenellos ſuperſtites
FRANCISCUM, ANNAM *&* CAROLUM *molli adhuc ſinu foveret.*
Maritus moeſtus hanc Mortem tam acerbe tulit
Ac ſi ipſe Ambiret.
Hoc igitur in Memoriam Conjugii, per ſex Annos & quodexcurrit
Feliciſſime tranſacti, ſummo Dolore & Pietate poſuit.
Obiit 15 Novris Anno { *Salutis* MDCLXXVIII. / *Ætatis ſuæ* XXXI.

Uſe of monumental inſcriptions

It may be thought that this monumental inſcription hath too much of the panegyric. And I confeſs the practice is modern; for the ancients affected the greateſt brevity, and titles only expreſſed in letters and ſyllables: and I have heard the great Sir Chriſtopher Wren ſay, that he did not like epigrams upon ſtone. And here, perhaps, the commendatory part had been better left out. becauſe it is in the power of every cobler to uſe the like. But, as to the account of families, which makes the greateſt part of this, for the ſake of pedigree, they cannot be too

much extended. In former times, offices poſt mortem, and the herald's office, preſerved the notice of births, matches, and deſcents, which (ſaving the dark pariſh regiſters) are not ordinarily diſcoverable to after-times, otherwiſe than by ſepulchral inſcriptions. As here his lordſhip's match, with a daughter of Thomas Earl of Down, is remembered, with their five children, Francis, Pope, Anne, Charles, and Frances, whereof Pope and Francis died young, and the three others ſurvived their mother.

Diſpoſition of his lordſhip's three ſurviving children.

After this funeral was over, his lordſhip's great concern was how to diſpoſe of his three ſurviving children; and he found means to do it amply to his ſatisfaction. For his mother, an excellent lady, a compendium of charity and wiſdom, took home to her his two ſons, Francis, afterwards Lord Guilford and Charles; and ſhe placed them at ſchool in the neighbourhood, and was wanting in nothing of maternal care and nurture of them while ſhe lived. And the daughter Anne was accepted by his lordſhip's ſiſter the Lady Wiſeman, afterwards Counteſs of Yarmouth, who reſided then at Chelſea: where alſo was a good ſchool for young ladies of quality, which was an advantage. His lordſhip did not live to ſee them grow up to a full age, but ſo fairly advanced, as if he had no reaſon to doubt their doing well;

and ſo it proved. After the good lady North's death, he removed his eldeſt ſon to Wincheſter ſchool for his better education, but left his younger in Suffolk, where ſome neighbouring relations had an eye over him; for he was very valetudinary. His lordſhip, by his will, committed the guardianſhip of theſe minor children to his three ſurviving brothers, and ſettled the remainder of his eſtate, after the deaths of his two ſons without iſſue, upon them, *which was a ſingular and great truſt, and it was no leſs juſtly and honourably performed.*

His lordſhip ſerved as a member of the Houſe of Commons, but in one parliament, which was that called the Long Parliament, for when he was ſolicitor-general, it was thought fit, that with the firſt intereſt that could be made for him, he ſhould be choſen. And it fell out opportunely enough that by the death of Sir Robert Stuart, as I remember ſome time recorder of Lynn Regis in Norfolk, and then burgeſs for the town, that place fell void; and none could make a fairer pretence to ſtand for that election than Mr. Solicitor-General; for what with his being commiſſioner for dividing the fens, and judge of the iſle of Ely, and what with his conſtant circuits and eminent practice in town and country, he was not only eſteemed but popular in all thoſe parts: and there was yet more to complete his intereſt there; for this vacancy

His lordſhip ſerved but once in parliament, which was for Lynn, by the Lord Shaftsbury's undue writ.

happened during the Dutch war, and the town had need of a court intereſt to procure convoys and guardſhips for them, which Mr. Solicitor effectually did. The Lord Shaftſbury was Lord High Chancellor, and carried it high in appearance, for the prerogative. The character and hiſtory of which noble perſon, and an account of his ſending out undue writs in vacation of parliament, are ſo fully diſplayed in the Examen, that it is needleſs to mention it here.

No oppoſition ſo leſs expence.

His lordſhip did not approve of this practiſing novelties with the parliament, and was afraid of what happened, but conform he muſt. When it was made known at Lynn that his lordſhip intended to ſtand for burgeſs, the magiſtrates intimated that they would ſerve him with their intereſt; and other encouragements he had: and before the writ came down, he made the town a viſit, and regaled the body with a very handſome treat, which coſt him above one hundred pounds; and they complimented him highly with aſſurances of all their intereſts, which they doubted not would be ſucceſsful againſt any oppoſition, but they believed there would be none. He was made free, and had the thanks of the body for his favourable aſſiſtance in procuring them convoys, &c. So far was well: and when the writ was ſent to the Sheriff of Norfolk, his lordſhip's engage-

ments were ſuch that he could not go down to the election himſelf, but ſent a young gentleman, his brother, to ride for him (as they call it,) and Mr. Matthew Johnſon, ſince clerk of the parliament, for an oeconomiſt, of which there was need enough. The rule they obſerved was to take but one houſe, and there to allow ſcope for all taps to run. Nor was there need of more, for, as had been foretold, there was no oppoſition, which was a diſguſt to the common people, for they wanted a competition to make the money fly; and they ſaid Hobſon's choice was no choice. But all paſſed well, and the plenipos returned, with their purchaſe, the return of the election, back to London.

The election voided, and his lordſhip again choſen. The generoſity of his adverſary prevented a petition.

The parliament met, and at the very firſt, the new members were attacked; for one ſtood up and recommended it to their modeſty to withdraw while the ſtate of their election was under debate; as they did, and were ſoon diſmembered by vote of the houſe; as is more fully related in the aforeſaid Examen. But thereupon the ſpeaker's warrants went to the great ſeal, and new writs iſſued. This cauſed his lordſhip to diſpatch his plenipos once more, on the like errand to his majeſty's ancient borough of Lynn Regis. At firſt, all things ſeemed fair; but the night before the election there was notice given that Sir Simon Taylor, a wealthy merchant of wine

in that town, ſtood, and had produce but of ſherry, which but of ſherry was a potent adverſary. All that night and next morning were ſpent in making diſpoſitions for conduct of the intereſt, and ſuch matters as belong to a conteſted election. But the greateſt difficulty was to put off the numerous ſuitors for houſes to draw drink, of which every one made friends to inſinuate in their favour, as if the whole intereſt of the town depended upon it. But theſe gentlemen plenipos determined to take no other houſe, but where they were, to let the quill, as well as the tap run freely, which made an account of above three hundred pounds. After the election and poll cloſed, all the chiefs on both ſides met to view the poll books; and Sir Simon Taylor, being on his own knowledge ofthe people's names, ſatisfied that the election was againſt him, called for the indenture, and ſigned it with the reſt. This was an act of generous integrity ſcarce ever heard of before or ſince, and is what I have on all occaſions mentioned for his juſt honour, and it would be ſtrange if I ſhould leave it out here. And it is material alſo; for, when his lordſhip came into the houſe, being a very good advocate, and generally well thought of, the party there ſtyled of the country, thought his ſitting in the houſe might be an acceſſion to the court intereſt of too much conſequence to be let paſs, if it might be hin-

dered; and accordingly they expected a petition (as almoſt of courſe) to come in againſt him, and an opportunity thereupon to try the experiment of heaving him out of the houſe: for, at that time, who would not prove a petition againſt a declared courtier? His lordſhip was generally acquainted, and paſſed well with the gentlemen of all ſides. But, in the houſe, none of the country party came near him, or cared that he ſhould ſpeak with them. So it paſſed till the fourteenth day; and there was but fifteen days of liberty to petition. Then one of them ventured to welcome him into the houſe, but aſked if his election was not like to be queſtioned. *No*, ſaid he, *it cannot be, for my adverſary ſigned the return for me.* Within an hour or two after, at leaſt twenty more of the ſame intereſt came and ſaluted him, as very well pleaſed with his company; as much as to ſay—*Since thou art choſe, who would not have it ſo?*

Being made attorney-general it was doubted if his lordſhip might ſit.

His lordſhip ſat in the houſe till he was made attorney-general: and then the ſame good friends began to diſcourſe of his incapacity of ſitting as a member of that houſe, there being an order as they ſaid againſt it, whereof the reaſon was that the attorney is of courſe an aſſiſtant of the Houſe of Peers. This was enough to engage his lordſhip to ſearch that matter to the quick, as he did, that he might if put to it, not be tempted to ſay any thing without book, and that

he might give his friends that were members juſt notices of the grounds of the pretence. But the country party never ventured upon the point; for, in truth, they had not that advantage as they pretended.

Attorney-general. Errors of the time ſtated.

So now let us paſs on to find his lordſhip in the attorney-general's place, which fell out upon the promotion of Sir Heneage Finch to the great ſeal. But, before this, there had been a notable time; for the king was beſet by a double-viſaged miniſtry, half papiſt and half phanatick, who co-operated in miſchief, the former to favour their party, and the other to ruin the king. The Lord Clifford and Arlington of the former, and Bucks and Shaftſbury of the latter party. And the game lay by ſoothing up the king, and puſhing him on in deſigns of advancing his prerogative. And they took, or made, ſome colours by the Dutch war, and other neceſſities, of the crown. Hence proceeded the ſtop of the Exchequer, commiſſion of martial law, enjoining actions againſt the bankers, indulgences againſt law, and huffing the parliament; as the hiſtories of that time (if true) but particularly the Examen will demonſtrate. But theſe parties had different aims, the popiſh really to enhance the king's power, in order to have the ſway of it on their ſide; the other to looſen the king from the affections of his people, and ſo directly to deſtroy him. They ſaw the crown, in

mighty credit and intereſt with the parliament, and that it was capable of being deſtroyed only by high flights of arbitrary power: for a few difficulties, ſuch as great occaſions, and little ſupplies, being once brought upon the crown, to be followed (as they ſuppoſed,) by either his majeſty's truckling to the parliament, or elſe uſing violence for money would ſoon bring it under: and upon this ſcheme, they puſhed hard.

Character of Lord Keeper Bridgman.

After the ſtop of the Exchequer, whereby the bankers fell expoſed to actions at law, the point was to get the Lord Keeper Bridgman to enjoin thoſe actions. He had been a celebrated lawyer, and ſat with high eſteem in the place of Lord Chief Juſtice of the Common Pleas. The removing him from thence to the Chancery, did not at all contribute any encreaſe to his fame, but rather the contrary, for he was timorous to an impotence, and that not mended by his great age. He laboured very much to pleaſe every body, and that is a temper of ill conſequence in a judge. It was obſerved of him that if a cauſe admitted of diverſe doubts, which the lawyers call points, he would never give all on one ſide, but either party ſhould have ſomewhat to go away with. And in his time, the court of Chancery run out of order into delays, and endleſs motions in cauſes, ſo that it was like a fair field overgrown with briars. And,

what was worſt of all, his family was very ill qualified for that place; his lady being a moſt violent intrigueſs in buſineſs, and his ſons kept no good decorum whilſt they practiſed under him, and he had not a vigour of mind, and ſtrength to coerce the cauſe of ſo much diſorder in his family. He bogled at diverſe things required of him, and particularly ſtopping the law ſuits againſt the bankers by injunction, and the commiſſion of martial law; although, at that time, there was colour for it by a little army encamped in Blackheath. And there was a meeting of the attorney and ſolicitor-general at his houſe; where it was agreed that theſe were rocks they muſt all ſplit upon if they could not be avoided. The Lord Shaftſbury took advantage of this difficulty, and, as was ſuppoſed, by undertaking to do whatever the Lord Keeper Bridgman refuſed, got him removed, and ſlipt into his place. But all theſe fine doings came to nought. The king agreed with the enſuing parliament; and then the Lord Shaftſbury, pretending, for ſaving himſelf, to turn into the diſcontented party, in the conſequence of affairs, ſhewed himſelf to be, at bottom, an utter enemy to the king and his family; and ſo, in truth, he continued, with remarkable perſeverance, all the days of his life. But his whole hiſtory, the reader will find particularly related in the Examen.

After he was turned out, and Sir Heneage Finch placed in his room, the king aſked his new Lord Keeper who they ſhould have to ſucceed him? He anſwered, *who ſhould ſucceed the captain, but the lieutenant?* And thereupon his lordſhip was made the king's attorney-general. Of which paſſage his lordſhip has left the following note. Made attorney general and his lordſhip's note.

Finch, Lord Keeper, attorney, and Sir William Jones, ſolicitor. } Here his lordſhip ſkips over

the Earl of Shaftſbury, who had the ſeal not much more than nine months. This change did not affect his lordſhip, ſo he paſſed it by in his catalogue. He was well pleaſed with his ſucceſſor; for he knew the ability of the man, and how well for that reaſon he was entitled to the place. And he thought it a credit to the king's affairs, when men, moſt eminent for learning, and diſpatch of buſineſs in the law, were taken into his majeſty's ſervice. His lordſhip was ſo far from retaining any offence at what was paſt, that he readily went in with the promotion of Sir William Jones. And if he had not conſorted with a party diametrically oppoſite to the intereſt of the crown, his lordſhip had joined in amity with him, and gone hand in hand in conſults, and tranſacting what belonged to their offices; which (as the modern courſe is) are nearly co-ordinate. But ſuch different aims, as they had, could not but make a

fiſſure which would not be cloſed. And thereof, and the conſequences, ſome account may be given elſewhere; and is already related in the Examen.

Gain by practice.

His lordſhip's acquiſitions by practice, while he attended only the King's Bench, had been very conſiderable; but after he, as king's counſel, came within the bar, he began to have calls into the court of Chancery; which he liked very well, becauſe the quantity of buſineſs as well as the fees, was greater; but his home was the King's Bench, where he ſat and reported like as other practiſers. And when his practice was greateſt in Chancery, he hath come, as an officer, and ſat on the bench, under the judges, by the prothonotary. His buſineſs encreaſed, even while he was ſolicitor, to be ſo much as would have overwhelmed one leſs dexterous; but when he was made attorney-general, though his gains by his office were great, they were much greater by his practice; for that flowed in upon him like an orage, enough to overſet one that had not an extraordinary readineſs in buſineſs. His ſkul-caps, which he wore when he had leiſure to obſerve his conſtitution, as I touched before, were now deſtined to lie in a drawer to receive the money that came in by fees. One had the gold, another the crowns and half-crowns, and another the ſmaller money. When theſe veſſels were full, they were committed to his friend (the

Hon. Roger North) who was conſtantly near him, to tell out the caſh, and put it into bags according to the contents; and ſo they went to his treaſurers Blanchard and Child, goldſmiths at Temple-bar. This ſame telling the money was a great truſt; and he was ſatisfied of the integrity of his friend, wherein he was confirmed by a very little accident: for while they were walking together, that young gentleman newly come from telling his money, accidentally feeling in his coat pocket, ſtartled and ſaid, *Here's an half crown* (ſuppoſed by accident to have ſlipt in there) but it proved only a piece of glaſs. His lordſhip, from the manner of that behaviour, concluded his friend to be (as he was) moſt ſtrictly juſt to him.

Privacies and deſires declining the court.

After the death of Sir Jeofry Palmer, his lordſhip had the advantage to come into his chambers, which were very commodious, having a gallery and at the end a cloſet, with a little garden. This ſerved him to walk in, and turn about with a friend, continually interchanging diſcourſe, than which no entertainment better pleaſed him: for that helped him to form his notions, and to teſt them upon thoſe of his friend. But his greateſt content was, that they afforded an accommodation for his brother from Cambridge, when he thought fit to come to London, ſo near that he could at any time, go from his buſineſs to him, and return to it again when he pleaſed; which was a prac-

tice he very much delighted in, and uſed. Such intercourſe, though with perſons raw, and little experienced in affairs, he liked better than to be wholly alone; for he conſidered that, if he did not learn, he taught; which, to him, was near as well: for as he, being young, had received great benefit by the advices and inſtructions of his betters; ſo he deſired to profit others, coming up under him, with the beſt counſel and information he could give them. He never lay there, but always went home to his family, and was ſeldom an evening without company agreeable to him. Nothing was difficult but his attendance upon, and dealing with, the court. His modeſty, and diffidence, and infinite cares not to ſlip, or commit any abſurdities in that captious nation, made him uneaſy, ſleeping and waking. Thoſe, who are ſo far from knowing what is fit to be done, as to profeſs hatred of all buſineſs, which was pretty nearly the ſtate of the court at that time, will yet preſcribe to ſuch as have reaſon to know better, and will not allow them the liberty of being explained, without being alſo accounted moroſe, and unfit for the court. So that his lordſhip lived in a perpetual ſtretch, as to his behaviour there, and, with all that, did not come off wonderful well; or, at leaſt, he thought he was often not well uſed: for he was continually tormented with raſcally projects, and the unreaſonable impor-

tunities of great men (uſually) at the heels of them. Beſides a ſort of falſeneſs and treachery, he obſerved in moſt of the court, made him decline having any attachments to any of their intereſts; but made it his rule to ſerve the king, and the legal government of England, with all the fidelity and ſkill he had, and to do nothing that was not juſtifiable by law, nor make himſelf obnoxious to any perſons who might, for his principles (which were always loyal) malign him. And, however the profits were great, and he was ſatisfied of the good opinion the king had of his judgment and fidelity; beſides that the Lord Keeper Finch, and the chiefs of the law, were moſtly his friends, and did not know of any ſlips he had committed; yet, always fearing the worſt, he was weary of his poſt, and wiſhed for another in a calmer region, though leſs profitable. And, among all the preferments of the law, his thoughts fixed upon the place of Lord Chief Juſtice of the Common Pleas; for he knew his own ſkill in the law ſo well as to be aſſured he was not unfit for it; and choſe it the rather, becauſe the buſineſs was wholly matter of pure law, and had little to do in criminal cauſes, or court intrigues; and he could anſwer for the rigid integrity of his determinations. And, in the intervals of buſineſs in that ſtation, which were conſtant and copious, he ſhould have more time and latitude to expatiate

in entertainments that were agreeable to him, and ſettle himſelf in a way of living at eaſe with his family, and enjoy his friends with more ſatisfaction. Upon which account, although he could not expect to receive ſo much there, as in the attorney's place by 2000*l.* per ann. yet he would have been glad, ſo to have purchaſed his eaſe.

Mr. Secretary Coventry a good manager. Then undertakers. His lordſhip preferred to the Common Pleas and Mr. Coke choſe at a vaſt expence.

As to the affairs tranſacted in parliament, his lordſhip had no great difficulty; for little or nothing of the king's buſineſs, in the Houſe of Commons, leaned upon him, becauſe Mr. Secretary Coventry was there, who managed for the court; and no man was ever better qualified for that poſt: for he was an ancient member, and had the nice ſtep of the houſe, and withal was wonderfully witty and a man of great veracity. He had never ſaid any thing in the houſe, which afterwards proved a lye; and had that credit there, that whatever he affirmed, the houſe believed. After he was gone, the court loſt ground; for there came forward a ſort of people called undertakers; for the court was negligent, and did not think of the parliament, till within a month of their meeting, and then were in an hurry how to order matters. Whereupon, ſome one or more of the court party in the houſe, who had a good opinion of their own ſkill, uſually ſtept in, and undertook for the management of the king's buſineſs that ſeſſions;

and his majeſty need not be farther concerned at preſent. And this kind of ſervice in the overture, was always acceptable; eſpecially in a place where all kinds of buſineſs was uneaſy, that is, in his majeſty's court. But the houſe always found out who were their guardians and ſponſors to anſwer for them: and ſuch never failed, through their indiſcretions, preſumptions, importunities, ſubterfuges, or tricks, to give advantage againſt themſelves; and, in a few days, commonly, were routed horſe and foot. And then there was no way but to quit them, and agree with the more friendly part of the houſe. All which muſt be readily owned by ſuch as remember Sir William (or Sir Francis) Wheeler, to name no others, managers for the king in the Houſe of Commons. When there is a ſet of honeſt gentlemen, as there was in that long parliament, nothing loſeth them ſo much as diſingenuity, and underhand dealings. For the adverſe party contrive to expoſe them with ſatyrical reflections, and make thoſe honeſt gentlemen almoſt aſhamed of their own party. No other was to be expected, but that his lordſhip ſhould be entirely for the intereſt of the crown; not ſo much upon account of his place, for that never carried him into any indirect action, but from his judgment, of which I have given an account elſewhere. And he was ſo far from loſing his intereſt with his

friends, by his behaviour there that he became more firmly allied to them, for his ſenſe was, commonly, theirs. He could not attend the houſe conſtantly, but took the liberty of purſuing his practice in Weſtminſter hall. And, being there, what he did was occaſional, and conſiſted chiefly in reſolving the fallacies of the country party: whom to oppoſe in gaining the point of a money bill, and anſwering to the artillery of grievances, which were always erected, and pointed at the money deſigns, was the chief of the court employ, in parliament, till about the time of Oates's plot, when the country party went off with all at once. But, long before that time, his lordſhip was removed into the Common Pleas, and Mr. Coke of Norfolk ſucceeded him in the burgeſhip of Lynn, but not ſo eaſy and cheap; for his managers did not keep in due bounds, but let looſe the tap all over that large town, and made an account of 7,000l. or more, reſting due to the town, beſides what had been paid for the expences. Sir Simon Taylor oppoſed, and thought he had the return, and being reſolved to petition, was courted by the Earl of Danby, at the price of all his charges, which were not trifles to forbear as he did, elſe his lordſhip's ſon-in-law, Coke, at that conjuncture, had been turned out.

Of the arts of parliament driving.

Whatever his lordſhip ſignified to the court intereſt, during the time he ſat in par-

liament, it is ſure enough that he ſerved himſelf, by improving his knowledge of men, and their ways in great aſſemblies. And the arts of driving are no where ſo eminent, as at the committee of elections. And it were well if all gentlemen, that come to ſuch public employments, would obſerve theſe arts; but with a ſort of contempt and ſcorn, and not think them matter of imitation; or, indeed, any arts ſo to be, but what tend to favour truth and juſtice. It was not without reaſon that the beſt orators of the antients determined that a man could not be a good orator, unleſs he was an honeſt man. For art is a good engine to ſubdue ignorance, or malice; but to ſupport the latter againſt juſtice, is, not an art but, a diabolical ſubtilty.

The circumſtances and conduct of his whole employment.

In the proceſs of this ſtage of his lordſhip's life, his condition was like that of a plant ſet in a proper ſoil, growing up, from ſmall beginnings, into expanded employment; ſo much, that one would think it ſcarce poſſible for one man to find time to diſpatch the affairs of it. One help he had, which was good ſervants, when he had moſt need of them. Mr. Matthew Johnſon, one bred in the office of clerk of the patents, was in that province, and Mr. Robert North for his chief clerk, viz. for the confeſſions and other affairs of truſt. And when buſineſs of titles of eſtates came to him, he often recommended his clients to ſome induſtrious and

able counſel; as was before obſerved. His lordſhip's great labour was to get time to be inſtructed well in cauſes of great conſequence, as trials at the bar, and hearings in Chancery; and, for that work, he took the freſh of the morning. He had a very truſty boy, who never failed, winter and ſummer, to come into his chamber at four in the morning. He could, over night, juſt, and but juſt, admit his clients and their agents; and, being informed, by them, in the hiſtory of the cauſe, and where the pinch was, he was then prepared, next day, to peruſe his breviate, and the papers left with him; which was impoſſible to be done for one, whilſt others waited without. The office of attorney hath little or no vacation; ſuch continual attendance on the court, did that office require. But he was more capable of conforming to it, becauſe, being then married, his habitation was in or near the town, and he had no country concerns to call him from thence. But, till his lady came with him to London, he kept no houſe in town, but ordinarily dieted in the Temple; that is, at noons, in the hall, and, at nights, in his chamber; where the ordinary commons, with a bottle or two, was a regale to him, and two or three conſtant friends with him. But that was, like the Harpies ſupper, by ſnatches, for he could ſeldom get many minutes to enjoy himſelf and his friends; ſuch was the importunity

of his buſineſs. But yet he took great pleaſure in thoſe little liberties; and he was not pleaſed when he had not, at leaſt, a third man (for I was always one) to help out his ſingle bottle, and, for fail, uſed to ſend for a choice friend or two. He uſed to ſay that a glaſs of wine, to ſedentary perſons, was equivalent to exerciſe. He could never ſit up late; for he muſt be up early. And, after dinner, a ſhort turn in the other world, was, not only an exceeding refreſhment, but, almoſt neceſſary to him; for his conſtitution required more ſleep than many others needed.

His virtuous courſe of life, when ſingle, atteſted.

Such was his lordſhip's courſe of life, during his celibacy; abſolutely void of all manner of vice, exceſs, and incontinence: of which I am yet a living witneſs, that ſcarce was ever from him, but in the very employ of buſineſs. I do not remember that he ſo much as took the air in his coach without me; and ſo, when he dined or ſupped abroad, unleſs with grandees of one ſort or other, I was with him. He never was in danger of being overtaken with wine to exceſs from his own ſeeking; but only when confined to company, eſpecially of ſuperiors, and that was very ſeldom, and ſo, far as clipping only; for he had ſtrength of head to bear a great deal. He was always ſenſible of this infirmity coming upon him, and could curb his ſpeech, but not his merriment, as I have obſerved already.

Married, no leſs, and more orderly.

After he was married, and his lady come to town, he became an houſe-keeper; but uſed lodgings for a conſiderable time, till he could accommodate himſelf with an houſe; which, at length, he did to his content, in Chancery lane, as has been related. His courſe of life was now much altered from what it was; but all for the better, as well in all kinds of accommodation, as the regularities of life, which he greatly affected. In this ſtate he kept a plentiful, but very plain table, and had great reſort of his friends to him; at dinner ſufficient, but much more at ſupper: for then he was more looſe from buſineſs, and company was moſt acceptable to him. And he, conſequently, held to his cuſtom of eating ſuppers, and counted it the beſt refreſhment he had in the four and twenty hours. And how he diverted himſelf with his family, when alone, will be ſhewed elſewhere.

Friend to ſtudents, and a virtuoſo.

I cannot vary his character much, in this ſtage, from that ſubjoined to the former, only, now he had a ſuperiority, and his thoughts were ever intent upon methods for rectification and improvement, wherever his views extended. And, as he had profited extremely by the encouragements, in his ſtudies, he had received from others, ſo he did what he could to adminiſter like advantages in ſtudy, to ſuch as came in his way to inſtruct: inſtances of which good will, I ſhall take occaſion particularly to

relate elſewhere. The ſtate was not very much roiled with faction, till he was taken from practice, to the ſeat of juſtice, and had more latitude to divert himſelf with ingenuities; ſuch as muſick, philoſophy, painting, mechanicks, and the like; which, in the abſence of ſtrangers, were the ſubject of his domeſtic converſation, as will appear in proper place.

Inſtances of an univerſal application to improve.

He had acquired, in this buſy time of life, a general ſkill in the European languages, as French, Italian, and Spaniſh. And, now, he fell, laſt of all, upon Dutch, and was very deſirous to make himſelf maſter of that. His friend Sir Peter Lely (of whom elſewhere) had inſpired him with an inclination to it; telling him what ſumptuous libraries they had, and magnifying the elegance and ſignificancy of his country dialect; and, as if there needed no other books to make men exquiſite ſcholars and politicians, he recommended to him a voluminous collection in folio, called *Saken van Staten*; ſuch a ſort of book as our Ruſhworth: And, in order to gather this part of the belles lettres, he got a Dutch Bible, and uſed to carry it to church. To be ſhort; in his greateſt flow of buſineſs, he let ſlip no opportunity of improving himſelf, as well in the law, as in other valuable accompliſhments. He had a very good memory, but never truſted it with his independent remarks; which made him (as

I have ſaid elſewhere) ſo given to note all uſeful occurrences; for, of ſuch matters, multitude confounds the remembrance. So neceſſary is it to have, as it were, a baſket to put them in. And this he did with no leſs conſtancy and application, after he was judge, nay, lord keeper of the great ſeal, than when he was a ſtudent, or minor practiſer. He was alſo a dexterous index maker: if he procured any good law book in manuſcript, which he thought worth the reading over, he certainly made an index to it; but every notable diſcovery, or light, in the law, derived upon good authority, he crowded into his ſolemn common place book. He would not reflect with himſelf that he had once got, but now had loſt any thing.

Made Lord Chief Juſtice.

Come we now to the third diviſion of his lordſhip's life, which commenced from the time he was advanced to the poſt of Lord Chief juſtice of the Common Pleas; and that was ſoon after the death of the Lord Chief Juſtice Vaughan. Of this preferment his lordſhip has left the following note.

Lord Chief Juſtice without ſoliciting. } I have mentioned that his lordſhip grew weary of the attorney general's place, and why, and how much he deſired a quieter poſt, and particularly that of the common pleas. Now we have it intimated, here, that his deſires were ac-

compliſhed; for, upon the death of Vaughan, the chief in that court, his lordſhip was looked upon, on all hands, to be the fitteſt perſon to ſucceed him. His lordſhip had but one ſcruple, which made him a little deliberate about his acceptance; and that was the difference of profit; for the attorney's place was (with his practice) near ſeven thouſand pounds per annum; and the cuſhion, of the common pleas, not above four thouſand pounds. And ſo far the reaſon wrought upon him, that he would expect that the offer of it ſhould be made him; and that he would not ſeek, although, for cogent reaſons, he much deſired it; but, if ſuch offer came, he was determined to accept it: and if the court ſhould uſe him ſo ill, as not to give him ſuch profer, he ſhould not be very much mortified. But, accepting, he ſhould account himſelf enfranchiſed from the court brigues and attendances, and other labours of his practice, at the price of the difference.

A diſappointment of Sir William Mountagu.

One thing fell out unhappily in this affair; which was a neceſſity to croſs the deſires of a near relation, for whom he had no ſlight reſpect; and it was Sir William Mountagu, one of the Boughton family, his lordſhip's mother's couſin german. Sir William preſſed, with extreme earneſtneſs, that his lordſhip would give way that he might obtain that place, alledging, that ſome of his anceſtors had been in it. And he

teiſed with a world of ſuch weighty reaſons, to induce his lordſhip to refuſe it; and, after that, he ſaid he doubted not of obtaining the place. All, that his lordſhip ſaid to him, was that he would not ſue for it; but, if it was offered he muſt hold him excuſed if he accepted it. This did not ſuffice; and Sir William took it deſperately ill of his lordſhip, that he would not, for his ſake, decline it. Such compliments are a little too coſtly to be expected, how near ſoever the relation is; and, in ſuch caſes, the ill manners lie in the aſking, and not in refuſing when aſked. But this incident bred no ill humour between theſe two noble relations. Sir William was made Lord Chief Baron of the Exchequer; and his lordſhip, while Chief Juſtice of the Common Pleas, lived in perfect amity with him; and he had a due reſpect for his lordſhip while they lived together. It is neither unlawful nor undecent for relations to be competitors; but, to ſuffer rancor and ill will to grow thereby, is a ſign of an upſtart and degenerous race. But perſons of honourable families, as theſe two were, will, as they did, be careful in fortifying their friendſhips ſo as no unlucky event may corrupt them.

Acted as Chief Juſtice of the Common Pleas.

His lordſhip forbore ſitting in court for diverſe days, to the end that ſuch cauſes, as had been agreed by the court, might receive judgment without farther argument.

And, then, his lordſhip, ſat conſtantly, according to the duty of his place. The court (anſwering the title Common Pleas) was placed next the hall door, that ſuitors and their train might readily paſs in and out. But the air of the great door, when the wind is in the North, is very cold, and, if it might have been done, the court had been moved a little into a warmer place. It was once propoſed to let it in through the wall (to be carried upon arches) into a back room which they call the treaſury. But the Lord Chief Juſtice Bridgman would not agree to it, as againſt magna charta, which ſays that the Common Pleas ſhall be held *in certo loco*, or in a certain place, with which the diſtance of an inch from that place, is inconſiſtent; and all the pleas would be *coram non judice*. Although at the ſame time, others thought that the locus, there, means the villa only, ſo that the returns being *apud Weſtmonaſterium*, the court might ſit on the other ſide of the abbey, and no ſoleciſm of juriſdiction happen. But yet that formal reaſon hindered a uſeful reform; which makes me think of Eraſmus, who having read ſomewhat of Engliſh law, ſaid that the lawyers were *doctiſſimum genus indoctiſſimorum hominum*.

Officers of the Common Pleas.

It ſeems that, in old time, the buſineſs of the court was very great, becauſe the offices are numerous. So it appears, at this day,

in the Chancery, that the clerks are multiplied. Firſt, the ſix did all the work that originally might be done by a ſingle ſecretary; and then their clerks, that roſe to ten a piece, mere copiers under them, have got to be officers, and thirty more added to them. And ſtill all of them have clerks, who may, in time, hope to be officers to, and beard their maſters, as they do the ſix clerks. The curſitors made out proceſs *de curſu*. Special writs are *magiſtralia*. The maſters in Chancery are twelve. The curſitors are by counties; theſe are the Lord Chancellor's. The philizers and exigenters are by counties alſo, and are of the Common Pleas. The prothonotaries are three, now, as it were, co-ordinate, but grew up with the buſineſs; for it ſeems, at firſt, there was but one, as in the King's Bench. He was the proper officer of the court, who was to enter up the replications, rejoinders, rebutters, &c. (pronounced in law French) upon the record in Latin, and not by paper books brought in by attornies, with ſerjeants hands, as now the uſe is. But yet the fees are taken as if the prothonotary did all, as his office required, by himſelf. If a ſerjeant ſaid *judgment*, that was a demurrer; if *priſt*, that was an iſſue to the country; and the form belonged to the prothonotary. But then the crown would needs have a peculiar prothonotary, who ſhould take care of the king's profits, and rights that ariſe in,

or come before, the court; and then, who ſhould deny him acting, in all cauſes, as the others did? Theſe were ſo buſy they had no time for paupers; ſo another prothonotary crept in upon charity, that the paupers, who could not pay fees, might be diſpatched. And now, of all theſe, it is hard to know which is which. They have their ſecondary clerks, and ride in coaches all alike; and, being a co-ordinate three, are no ſmall nuiſance to the ſearching buſineſs. The chief juſtice hath the diſpoſing of the officers of the court; but, at the admiſſion, the other judges, not caring to ſee the pudding creep, and have no ſhare, expect to be attended; the conſequence whereof is a ſmall preſent. I have obſerved that, upon change of ſome officers, there were bickerings, againſt this power of the chief juſtice, in a manner ariſtocratical; as if placing of officers was the act of the court, in which they ſat as judges in parity of voice with his lordſhip, and were alſo alike truſted in the approbation of fitneſs, or to that purpoſe.

Keeper of the records and treaſury.

He is the keeper of the records, and makes the returns of writs of error, and puts in a clerk of the treaſury where the records are kept; which is of conſiderable value. When his lordſhip came into his place, he found the clerkſhip of the treaſury in grant to the Lord Berkley. The crown had granted that place diverſe times, but it was

always reſiſted by the chief juſtices, who inſiſted upon the nomination to the place, not more by a preſcription than, from the nature of it, being the office and charge of the chief juſtice, and the clerk his deputy for whom he is to anſwer; and that the patent was void in law, as it was alſo for the nomination to other offices that the chief juſtice claimed by preſcription. Upon this conteſt with the Lord Berkley, in conſideration he was a deſerving perſon, and it would not be well taken to be ſevere with him, his lordſhip let go about half the profits, and, naming his own clerk, allowed the Lord Berkley five hundred pounds per annum, while he lived. But, after his death, his lordſhip gave way to no patentee, if there was any; and if a patentee had claimed, he would not have allowed it. How that matter hath gone ſince I know not. His lordſhip always ſearched to the bottom of authority, and reaſon, in every thing he undertook, which was relevant, and above the common notion of things; as will appear by the next inſtance of an important alteration he made and ſucceeded in.

Contention for juriſdiction.

Notwithſtanding this long catalogue of officers, his lordſhip found the court ill ſupplied with buſineſs to keep them all employed; for, as matters had been ordered in Weſtminſter hall, the court of King's Bench went away with much the greateſt ſhare of the ſuits promoted by London

writs; and the proper court ſat idle, and had ſcarce enough to countenance their coming to Weſtminſter Hall every day in the term: and it was thought that if the country attornies, who were moſt of the Common Pleas, had not, by taking apprentices, continued a ſucceſſion of ſuch as brought their buſineſs to that court, it had been utterly deſerted. This may ſeem wonderful, but really ſo it was: for, the two courts being upon terms of competition, the King's Bench outwitted the Common Pleas: and it was by gaining an eaſy way of holding to ſpecial bail upon latitats; for plaintiffs are commonly very outrageous, and love to turn the firſt proceſs (by a barbarous abuſe of ſpecial bail) into an execution, which ought to come after execution, and be the laſt. And the Common Pleas was rightly ſerved; for they thought to exclude the King's Bench by getting an act of parliament that none ſhould be held to bail unleſs the cauſe of action was expreſſed in the writ. That was done of courſe in the original writs returnable in the Common Pleas; but not in the King's Bench, whoſe the proceſs of latitats was, viz. *in tranſgreſſione ſuper caſum.* There the Common Pleas thought they had nicked them. But the King's Bench was not ſo ſteril of invention as to want the means of being even with that device; and therefore they added in their writs *ac etiam billæ* to the *tranſgreſſione*

ſuper caſum (for inſtance) *centum librarum;* and then, ſaid they, the cauſe of action is mentioned in our writs. This was advantage enough over the Common Pleas; for their originals were fineable: and not ſo expedite to be put in due form as the common *tranſgreſſione ſuper caſum*; for, upon that, the party, being (as the ſtyle of the court is) *in cuſtodia mareſchalli*, may declare for any cauſe of action whatever. The late chief juſtice, Sir Orlando Bridgman, and his officers of the Common Pleas, gave this way of proceeding by the King's Bench very ill language, calling it an arbitrary alteration of the form of the legal proceſs, and utterly againſt law. But the loſers might ſpeak; they got nothing elſe; and the *triccum in lege* carried it for the King's Bench; which court, as I ſaid, run away with all the buſineſs.

Ac etiam ſet up in the Common Pleas.

In this melancholy ſtate, his lordſhip found his court of Common Pleas, when firſt he ſat there; and his mind was much taken up with ſpeculations concerning it, and deliberating whether or no a way might be found out to ſet themſelves upon a level (at leaſt) with the King's Bench as to Common Pleas. He thought it hard that the court, inſtituted for ſuch, ſhould be deprived by a court that was inſtituted for pleas of the crown; and that it was a ſhame to be outwitted. He did not ſee but they had as much power over the proceſs of the

law as the King's Bench had; and, at laſt, determined to put in execution the ſame device that they had uſed, which, being good law at one end of the hall, would not be againſt law at the other. And it was by doing the ſame thing in their writs called *clauſum fregits*, upon which a *capias* lies; and, after appearance, the plaintiff may declare for debt, or aſſumpſit, &c. and filing a proper original at any time, before a writ of error brought, warrants the judgment. This was by adding the ſame words *ac etiam billæ*, &c. and then they, upon the *clauſum fregits* (without fine or delay) might hold to bail, as the other court did upon the latitats. But this was not done without very much conſideration, and weighing all conſequences, and all objections, and compromiſing all intereſts, that the regulation might paſs ſmooth, and without oppoſition from any but the King's Bench, for whom they had an anſwer ready. For whereas the Lord Chief Juſtice Hales exaggerated the ſame objections againſt the Common Pleas, as Bridgman had before urged againſt the King's Bench; it was aſked how he could criminate the Common Pleas for that which his court had done, and continued to do every day.

The great difficulties, to be got over, were, firſt, to reconcile the king's intereſt, Difficulties therein ſurmounted, and

Buſineſs encreaſed.

and, next, the lord chancellor's. The king had fines upon the originals, and the lord chancellor diſpoſed of the curſitor's places, that made them out. But his lordſhip ſurmounted them by ſhewing that care ſhould be taken (and orders, for that end, were effectually eſtabliſhed) that originals ſhould be filed where they were neceſſary, and they were not otherwiſe filed before; and the *ac etiams* ſhould not take place, but in ſuch caſes only where a latitat would ſerve. So the officers, or the crown, did not loſe any thing; but, on the contrary, were like to be great gainers by bringing in flow of buſineſs into the court, which would have that effect. For what was got by forcing all ſuitors to proceed by latitat, which could produce no original, and ſo decline this way that, ſometimes, would produce them? And to ſhew the neceſſity of it, it was made appear that, for the eaſe of arreſts and bail, even the attornies of the Common Pleas uſed the King's Bench writs, by dealing in the names of the proper attornies of that court. I remember that, when this matter began to be formed in his lordſhip's mind, he thought of uſing the words *nec non* inſtead of *ac etiam*; and then the writs, for diſtinction-ſake, ſhould be called *nec nons*: but, at length, he thought fit not to vary a ſyllable; for, however, the thing was the ſame, the different ſound would ſerve to

quarrel at; and, in captious matters, it is beſt to give no handles. I have walked over this alteration of the Common Pleas proceſs (which was wholly owing to his lordſhip's invention and formation, as it is now practiſed,) in an hiſtorical rather than a legal ſtyle. But it is not for want of a good guide; for I have a complete account of it together with, not only the hiſtorical part, but, all the conſults, deliberations, and compariſons of his lordſhip's, belonging to it, from his own pen. And though it is of that kind which few, but profeſſed lawyers, may comprehend, becauſe it falls upon forms, and terms of law; each of which needs a gloſſary to explain it: yet the matter and conſequence in his lordſhip's conduct, by whoſe ſkill it was eſtabliſhed, was too bulky to be here let paſs in ſilence. After this proceſs came into common uſe, it is ſcarce to be conceived how the court revived, and flouriſhed; being, inſtead of vacation in term, rather term in vacation. So large was the encreaſe of trials, by *niſi prius* out of the court, as alſo of motions and pleas in the court. Not a little of which encreaſe was alſo owing to the fame and common opinion of his lordſhip's juſtice and ſteadineſs in his adminiſtrations; whereby counſel would adviſe, and attornies aſſuredly depend upon ſucceſs, if their cauſes were ſound and good.

Coſts not allowed attornies in *propriums.*

His lordſhip made another regulation, which, being but a direction of the court, without any ſolemn act or order regiſtered, I will mention here. The allowing *propriums* to the attornies, in taxing of coſts, was a very great abuſe: for, if they have their buſineſs paſs the offices for nothing, it is favour enough for them; but if they prevail and recover, ſo that coſts are to be taxed, and, in doing that, the officer allows them the coſt of the offices, which they never paid, they gain by frivolous ſuits: for, if they recover but 1*l.* damages, or ſnap a judgment againſt a poor man by a turn of art, they ſhall, not only have coſts taxed for what they laid out, but for what they did not lay out; which is clear gains to them, out of the purſe of a poor man, whether they had reaſon or not. This was manifeſtly the cauſe that attornies multiplied *propriums*; out of which, by meer coſts, they made a certain profit. His lordſhip conſidered this as an abuſe of the privilege of attornies, and would not permit that they ſhould have any coſts allowed, which they did not expend: and ſo the court thought fit to declare to the prothonotaries. But this made almoſt a mutiny of the officers and attornies: the latter are always favourites of the former, becauſe they bring griſt; and they clamoured, ſaying that this made the privilege of the attorney become the

privilege of the adverſary; and that it indeed deſtroyed their privilege; and that, if one party muſt gain by the allowance of it, as formerly, it is more reaſonable it ſhould be the attorney, than the other party. To this it was anſwered, that if the attornies were weary of their privilege, they might quit it, and be upon the ſquare with other men. But if the court finds their privilege turns to a common nuiſance, it is high time to take it away. So it ſtood in his lordſhip's time: I know not how it hath gone ſince, whether they have prevailed to get this good order antiquated or not; nor doth it much concern my preſent deſign.

Story of the dumb day.

There was an incident, that happened not long after his lordſhip came into the place of chief in that court, which though in itſelf, and in the end of it, ridiculous, yet, being an affront to the court, and in particular to the lord chief juſtice, and by the whole bar of ſerjeants, all in a lump together, ought to be related, as I ſhall do, really as it was acted by them. It hath been the uſage of the King's Bench, at the ſide bar below in the hall; and of the Common Pleas, in the chamber within the treaſury, to hear attornies, and young counſel, that came to move them about matters of form and practice. His lordſhip had a younger brother (Hon. Roger North) who was of the profeſſion of the law. He was newly called to the bar, and had little to

do in the King's Bench; but the attornies of the Common Pleas often retained him to move for them, in the treaſury, ſuch matters as were proper there, and what they might have moved themſelves. But however agreeable this kind of practice was to a novitiate, it was not worthy the obſervation it had; for once, or twice a week, was the utmoſt calculate of theſe motions. But the ſerjeants thought that method was, or might become, prejudicial to them, who had a monopoly of the bar, and would have no water go by their mill, and ſuppoſed it was high time to put a ſtop to ſuch beginnings, for fear it might grow worſe. But the doubt was, how they ſhould ſignify their reſentment, ſo as to be effectually remedial. At length they agreed, for one day, to make no motions at all; and opportunity would fall for ſhewing the reaſon how the court came to have no buſineſs. When the court (on this dumb day, as it was called) was ſat, the chief juſtice gave the uſual ſignal to the eldeſt ſerjeant to move. He bowed, and had nothing to move: ſo the next, and the next, from end to end of the bar. The chief, ſeeing this, ſaid *brothers, I think we muſt riſe; here is no buſineſs.* Then an attorney ſteps forward, and called to a ſerjeant to make his motion; and, after that, turned to the court and ſaid, that he had given the ſerjeant his fee, and inſtructions over night, to move for him, and deſired he might do it. But profound ſilence ſtill.

The chief looked about, and aſked, *What was the matter?* An attorney, that ſtood by, very modeſtly ſaid, *that he feared the ſerjeants took it ill that motions were made in the Treaſury.* Then the chief ſcented the whole matter, and, *brothers*, ſaid he, *I think a very great affront is offered to us, which we ought, for the dignity of the court, to reſent. But that we may do nothing too ſuddenly, but take conſideration at full leiſure, and maturely, let us now riſe, and to-morrow morning give order as becomes us. And do you attornies come all here to-morrow, and care ſhall be taken for your diſpatch, and, rather than fail, we will hear you, or your clients, or the barriſters at law, or any perſon that thinks fit to appear in buſineſs, that the law may have its courſe;* and ſo the court roſe. This was like thunder to the ſerjeants, and they fell to quarrelling, one with another, about being the cauſe of this great evil they had brought upon themſelves: for none of them imagined it would have had ſuch a turn as this was, that ſhaked what was the palladium of the coif, the ſole practice there. In the afternoon, they attended the chief, and the other judges of the court, and, in great humility, owned their fault, and begged pardon, and that no farther notice might be taken of it; and they would be careful not to give the like offence for the future. The chief told them, that the affront was in public, and in the face of the court, and they muſt make their recognitions there next morn-

ing, and in ſuch a manner as the greatneſs of their offence demanded; and then they ſhould hear what the court would ſay to them. Accordingly they did; and the chief firſt, and, then, the reſt, in order, gave them a formal chiding with acrimony enough; all which, with dejected countenances, they were bound to hear. When this diſcipline was over, the chief pointed to one to move; which he did (as they ſaid) more like one crying than ſpeaking: and ſo ended the comedy, as it was acted in Weſtminſter hall, called the dumb day.

Recovery of infants.

His lordſhip was exceedingly troubled with the importunities of great men. As, for inſtance, the Lord Bruce, who had married the ſiſter and heir of the Duke of Somerſet, and the Lord Willoughby, who married Mrs. Wynn, and diverſe others, whoſe eſtates were ſettled, and their ſons tenants in tail veſted. Theſe perſons importuned him to give way that privy ſeals, to enable theſe heirs to join in common recoveries for barring the entails, might take effect; and that recoveries, under colour of thoſe privy ſeals, might be allowed to paſs in court. Several of them had petitioned his majeſty, and had references to him depending. But his lordſhip was ſo averſe, or rather poſitive to the contrary, that they deſiſted. He alledged that if a guardian, regularly aſſigned by the court to plead for the infant, would let a recovery paſs, they had nothing to ſay to

it. Their only care, in ſuch caſe, was not to admit a guardian irreſponſible; for the infant had an action, or an account, againſt ſuch guardian, as for a breach of his truſt, but no perſon of value was willing to venture that. And as for the opinion that a privy ſeal, if the court allowed of it, would take away the error, and that a ſuit, for amends to the infant, would not lie againſt the guardian, or that a guardian that was a beggar might be aſſigned, they would all fail them; for the privy ſeal altered no aſſurance, or right, and imported only that the king would not puniſh his judges for the miſdemeanor: and, perhaps, not that neither; for an illegal licence, to the injury of a particular perſon, is void, even againſt an indictment. *And*, ſaid his lordſhip, *either ſuch recovery of an infant is lawful or not. If lawful, it ought to be let paſs by the judges, without more ado; and if it is not lawful, the king ought not to be troubled about it.* His lordſhip was not ſo utterly againſt this practice, without reaſon; and that ſettled upon great deliberation, and conſultation of former attempts and proceedings. For, his lordſhip had cauſed ſearches to be made for precedents of recoveries of infants by guardian, and had a long liſt returned him. It would be well if the judges of the law, in all times, ſworn to act according to *Magna Charta*, as in the place of majeſty, *nulli negabimus, nulli differemus juſtitiam*, would be as careful

of the rights of the ſubject, according to law, as his lordſhip was. What is here alledged of recoveries of infants, is a ſignal inſtance, on his part, that he preferred the duty of his office to all intereſt at court: and, in ſuch caſes, the courtiers are often furious and (according to the doctrines there) criminative againſt the judges, that are not eaſy, as being moroſe, ill bred, and diſreſpectful, and ſcarce to be endured in their places. But compariſons of times, perſons, and things, however juſt, are, for the moſt part invidious; therefore I carry this no farther, but proceed to another eminent inſtance of his lordſhip's religious punctuality in the due performance of the duty of his office, wherein any perſon, in the world, was, or might be, conſequentially intereſted, or concerned. And I have heard him ſay, more than once, that he would have it in his power to ſwear upon his death bed that, in all his employments, and truſts, he never knew any thing out of order, which he did not endeavour to ſet right as ſoon and as well as he could.

Fines of infants.

The lord chief juſtice of the Common Pleas, by virtue of his office, takes recognitions of fines, out of court, which are afterwards recorded in court. But the other judges do it by virtue of a *dedimus poteſtatem*; but only their caption is returned and recorded without oath: whereas, where the *dedimus* is to ordinary per-

ſons, it is returned upon oath: unleſs, as they ſay, there be a knight in the commiſſion; and, in that caſe, it comes in without oath; which, by the way, being ſo, is a fair pathway to frauds as to infants and feme coverts. But this advantage of the chief juſtice brings more fines, in and about London, to be taken by him; and he hath a clerk called his clerk of the fines. There are, ſometimes, frauds in the undue captions and returns of fines, which are of great conſequence to men's titles; and although a fine be never ſo fairly entered and recorded, yet, if, upon complaint, and hearing of parties, it be found to have paſſed unduly, the court vacates the fine, as if none ſuch had ever been. And, particularly, the chief juſtice, knowing of any ſuch abuſe, by what means ſoever it is, ought, *ex officio*, to call the parties, and, after due examination had, do right. Now, when a covetous, or needy man, hath occaſion for his wife's land, to alien, or to reſerve for himſelf, and it happens that the woman is under age, and cannot, regularly, ſettle, then the trick of a ſurreptitious fine is tried. And there is a ſtrong temptation to it; which is that, if the woman dies before a fine levied, her eſtate goes away, but if her fine paſs during her minority, and ſhe lives to be of age, all is ſafe; for, after full age, a writ of error doth not lie, for the cauſe of infancy, to reverſe any fine: and that

for a very odd reaſon, viz. that infancy is to be tried only by inſpection of the perſon, which cannot be done after full age: Therefore, unleſs a man gets his wife's fine during her minority, he runs the riſque of her death before. But yet, even after the full age (as I take it) if the court, upon examination, find a fraud in the commiſſioners, and that the party was really under age at the time of the caption, they will vacate the record of the fine, as unduly obtained and entered, though a writ of error, in ſuch caſe, could not be brought to do it.

Fines vacated for infancy.

It happened that his lordſhip came in the way of a diſcovery of the like practice in two caſes. One of them was from a ſlip in the diſcourſe of an intimate friend, who was, at vacant times, ſeldom abſent from him. This perſon was told (inadvertently) by a gentleman of value, that he had obtained of his wife, an inheritrix, a fine during her minority; and he (more unthinkingly) ſpoke of it in his lordſhip's hearing: and, after this, no intereſt, or entreaty, would prevail with his lordſhip to paſs it by; but he immediately ſent his order for the gentleman, his lady, and the commiſſioners, to attend in court, and upon hearing all parties, vacated the fine. If the lady had died before her full age; the eſtate had gone away; but ſhe lived to levy another fine; and, ſo, no harm was done, but only

the diſgrace of having plaid a falſe trick to no purpoſe. And he did the like in another caſe, which he catched a knowledge of by like accident. So rigorous was he to his purpoſe, I touched before, viz. *Nil conſcire ſibi.*

And, as for fines themſelves, they are no other than an accord of a law ſuit entered among the acts of the court upon record; and, now as well by the tenor of them, as by uſage, and certain ſtatutes interpoſing, they are become a common, and the firmeſt, aſſurance of lands. The uſual import of them, for aſſurance of freehold, is a cognizance of right founded upon ſome legal conveyance, preſuppoſed; which implieth an antecedent feofment; and therefore a fine is called a feofment upon record. This courſe is the moſt ancient of any in our law, and is coeval with the county court, which was the ordinary court of juſtice, in the times before the conqueſt. It was, then, a common practice to recogniſe deeds, concords, and laſt wills there; which being entered in the acts of the court, or wrote in the margin of God's book, (the maſs book, or of the bible itſelf), was irrefragable; as who will may ſee in the learned epiſtolary diſſertation of the Reverend Dr. Hicks in his great Theſaurus. But after the Norman conqueſt, when the king's courts were eſtabliſhed, and titles of lands, which were feudal, only triable there (for free-

Nature and antiquity of fines.

hold at this day, ouſts the county court of juriſdiction) after the older uſage of recognizing in the county 'court (then deprived as to land) they came to recogniſe in the king's court of Common Pleas; but it muſt be with royal leave, and paying to the king a fine for the liberty of agreeing: becauſe, if the ſuit had gone on, the party, in the wrong, was to be amerced. Then, after the licence actually obtained, and the king's ſilver paid, without which the concord is no fine, the fine is perfected, though in ſome other reſpects, deficient. Hence, as I take it, the concord is called a fine levied, and not becauſe it is *finis litium*. I have here but touched ſo much as I am appriſed of the ancient hiſtory of the law, as to fines, in conformity to what his lordſhip uſed to recommend to his friends, who were ſtudiouſly inclined; encouraging the ſpeculation of originals, or the hiſtory of the common law; as will be ſhewed in proper place.

Brunſkill's project of the green wax.

While his lordſhip ſat as chief in the Common Pleas, he, and the other judges, were exceedingly troubled with a very impertinent projector, one Brunſkill, who pretended to make great improvements to the crown, by the revenue of the green wax; which is that which comes, or ought to come, into the Exchequer, by eſtreats from the ſeveral courts of juſtice, and conſiſts of the mulcts of jurors for default of appearance, and other mulcts, which are ſent

from thence down in ſchedules, under a ſeal of green wax, by way of warrant, to the ſheriffs and bailiffs of liberties, to be levied. His lordſhip (and the judges) being tormented with references, from the court and the treaſury, about a patent which this Brunſkill was ſuing out concerning this revenue, applied his thoughts chiefly to it, that he might be able to anſwer thoſe great men, who (as in all raſcally projects, which come with pretence of great gains, and are little underſtood) from behind the curtain, ſolicited the project, and were to beſharersin it. And, having ſearched all corners to find what had paſſed formerly in that matter, and deſigning thoroughly to expoſe the vanity, or rather (with reſpect to the quiet of the people) the peſtilence of it, he left in writing, what he was pleaſed to entitle, *an Hiſtory of the Green Wax;* and it is ſufficient to inform any one that is deſirous to underſtand the walks this project hath had, and the true intrigue of it. But in regard I find a paper of his lordſhip's upon the ſame ſubject, which I preſume was wrote more early, in order to anſwer ſome great man's importunity, I ſhall ſubjoin that here; which, for the preſent, may give an account ſatisfactory enough.

Account of it by his lordſhip.

" The green wax was in the ſurvey of " one Mr. Aram, when Sir Robert How- " ard held the farm of it, who appointed " the beſt men he could get for the ſer-

" vice. It was repreſented to the king
" that the judges and juries were diſcou-
" raged, and that the revenue went to
" private hands; and thereupon the king
" bought in the farm for ſix thouſand
" pounds. Then Mr. Brunſkill's project
" was ſet on foot to improve this revenue
" to twenty thouſand pounds, ſixty thou-
" ſand pounds, and, afterwards, to four hun-
" dred thouſand pounds per annum. Upon
" the firſt, Mr. Aram's patent was deter-
" mined, and the king expreſſed ſome diſ-
" like to Mr. Aram. Afterwards Mr. Brun-
" ſkill kept a fluttering to ſet up an office
" in the Temple, and great lords to be
" commiſſioners, which alarmed all the
" world. And Mr. Brunſkill would never
" take the ordinary care that belonged to
" the buſineſs, but preſſed the judges to
" make ſuch rules and orders as they could
" not do by law; and he complained of
" them to the king, and entered into contro-
" verſy with them; ſo that, for ſeveral
" years, upon the pretence to improve, the
" care of this revenue was wholly neglect-
" ed. I, thereupon, mentioned to my Lord
" Rocheſter a neceſſity of having a ſur-
" veyor, that is a reaſonable man, and re-
" commended Mr. Coltclough, and promi-
" ſed my aſſiſtance and inſtructions; and he
" was employed by the commiſſioners of the
" Treaſury, and I gave him inſtructions how
" he ſhould proceed. But my Lady Yar-

" mouth, Mr. Brunſkill's patroneſs, hearing " of it, went to the king, and claimed it as " right that Mr. Brunſkill ſhould have it, and " no man elſe employed: and ſo ſtopped " Mr. Coltclough's patent; and it hath been " neglected ever ſince. The king is now " pleaſed to declare he will have this reve- " nue taken care of, and recommended it " to the lords of the treaſury, to find a " fit perſon. Mr. Brunſkill's patent, if he " hath any, muſt firſt be determined."

It ſeems this green wax project began with a pretence of pure collection, but ſoon became an intereſt; and, at firſt, the diſcourſe ran only upon the caſual profits; but, afterwards, all penalties of ſtatutes were to be put into the patent. And that explains the inefficacy, and, then, the reſtleſſneſs of Brunſkill. For, firſt, he would not collect the revenue, that it might ſeem little, and be the readier granted. And nothing would ſerve him but a grant of all the revenue ariſing by the king's courts. And when buſineſſes, of this nature, want ſhoulders at court to heave them forwards, then great men, and topping ladies (hopeful ſolicitrixes) are taken in for ſhares, and ſo let into the ſecret. And if it had not been for ſuch knotty inflexible pieces, as theſe judges, and particularly his lordſhip who had the labouring oar, and took care rightly to inform his majeſty and his miniſters, of the foul practiſes (intentionally) couched under

The project failed.

fair pretences, the project, to the infinite vexation of the people, and little or no profit to the crown, had, probably, taken effect.

Solicitous againſt all abuſes.

I have not here obſerved any order of time in the mention of theſe paſſages nor do I intend it more in thoſe that follow; it being as I take it, not material, ſo long as I keep myſelf within the proper ſtage of his lordſhip's life, that is, his being a judge of the common law. I muſt needs ſay that that was his peculiar faculty; within the ſphere of which he was ſcarce ever at a loſs, or failed to extricate, even on a ſudden, the moſt perplexed cauſes and queſtions of law. I may not here give a character of his juſtice without repetition, and that of the panegyric kind; of which too much, though never ſo true, is fulſome. But I may knowingly affirm that his integrity was untainted; and he never warped to grieve any adverſary for party, or in particular, nor was ſhy in doing right to his friends for fear of obloquy, for he knew what he did, and always gave reaſons in public that would ſuſtain it. But he ſhewed his univerſal good will by nothing more than a reſtleſsneſs under abuſes that tended to grieve mankind. No one can think any man, not ambitious of doing good, could be ſo taken up with ſpying out what was amiſs, and ſuggeſting remedies, as he was,

Of all which I ſhall, in the following ſheets, give a particular account.

All the while his lordſhip was chief juſtice of the Common Pleas, and had leiſure, he bent his thoughts very much to regulating what was amiſs in the law. For it is impoſſible but, in proceſs of time, as well from the nature of things changing, as corruption of agents, abuſes will grow up; for which reaſon, the law muſt be kept as a garden, with frequent digging, weeding, turning, &c. That, which in one age, was convenient, and, perhaps, neceſſary, in another, becomes an intolerable nuiſance. His manner was, as any abuſe, or regulation, came in his mind (of which very many, from the multitude of buſineſs, that paſſed him, muſt happen) he ſet it down upon ſome by-paper, or book, uſed for noting. And then, upon a ſecond view, and reconſideration, he digeſted his thought, and brought what he had ſo digeſted, into the form of a tract, and thereon deſigned to prepare acts of parliament, as he had encouragement and opportunity. He had a great hand in the ſtatute of frauds and perjuries, of which the Lord Nottingham ſaid that every line was worth a ſubſidy. But, at that time, the Lord Chief Juſtice Hales had the pre-eminence, and was chief in the fixing that law: although, the urging part lay upon him, and I have reaſon to think it had the firſt ſpring from his lordſhip's motion. For I

Of the neceſſity of regulations in the law.

find in ſome notes of his, and hints of amendments in the law, every one of thoſe points which were there taken care of; and diverſe other matters, which he ſet his mark upon, have ſince been regulated by acts of parliament expreſs.

His lordſhip moſt clearly for a regiſter.

He was extremely deſirous that a regiſter of titles to land ſhould be ſettled, and he worked ſeriouſly upon it. There were frequent attempts in parliament to eſtabliſh one; but none ever was preſented to them tolerably digeſted; and ſo they came to nothing. And beſides, the matter being a ſubject of great ſkill, as well as foreſight, in the law, the gentlemen of the country are afraid, and hearken to the learned as when they ſettle their eſtates; and ſuch learned gentlemen, admitting they were willing to it (as they are reputed, for the ſake of intereſt in practice, not to be) they would be ſcrupulous enough; but, being averſe, they raiſe a miſt of ſcruple upon every ſuch bill, and repreſent the poſſibility of frauds in the offices to be ſo dangerous to men's titles, that the country gentlemen, who do not take upon them to judge, and will truſt nobody, fly back; and there falls the bill. And ſo it will ever be until they truſt ſome perſons with the conduct of it, who are capable and willing to promote it. For, as to the tremendous frauds, that are ſo much exaggerated by ſome, I muſt needs alledge that records of every court of

juſtice are obnoxious to ten times more; and if thoſe courts were now to be ſettled, no man could agree to ſuch looſeneſs of keeping records, that concern men's eſtates, as there is to be obſerved: and yet they do the work they were inſtituted for; and ſo would regiſters, if they were once eſtabliſhed. As, for inſtance, the regiſter of the Fens hath not had one fraud exerciſed upon that office ſince, by the act for dividing the great level, it was erected.

Hales wrote ſo as amounted to an oppoſition.

My Lord Chief Juſtice Hales had turned that matter in his thoughts, and compoſed a treatiſe, not ſo much againſt the thing (for he wiſhes it could be) as againſt the manner of eſtabliſhing of it; of which he is not ſatisfied, but fears more holes may be made than mended by it. My Lord Chief Juſtice North, on the other ſide, thought that it was not only practicable, but abſolutely neceſſary, and, if it were not done, that forgery would ſoon be the beſt trade in England. That uſed to be his expreſſion.

His lordſhip's reaſons and anſwer to Hales.

And becauſe ſome uſed to ſay that forgeries were not frequent, or that they were commonly unſucceſsful, becauſe, on careful examination at trials, they were, for the moſt part, detected; he bethought himſelf of all the ſucceſsful forgeries that came to his own knowledge, or that he really thought to be ſo in the courſe of his buſineſs; and of them he made a liſt. The modern way

of conveyancing is ſo private that no wiſe man, be he never ſo careful, can be aware of it; and his lordſhip thought the law ought to be ſo ſettled that a wiſe and careful man might be ſure of his title, whatever became of the ſupine and negligent, and that the old rule is true, *viz quod vigilantibus & non dormientibus obveniunt leges.* That is, that laws are made for the benefit of thoſe that are watchful and diligent, and not of the careleſs and negligent.

Of acts of parliament.

After his lordſhip's death, I found, among his papers, ſeveral draughts of acts of parliament, which he had prepared to put forward as opportunity offered. By thoſe I perceive his intent was not to croud into one bill many matters; but to paſs them in ſeparate bills, for readier diſpatch in the two houſes. Elſe, any one matter, of long debate, retarded all the reſt upon which no queſtion was made. If the gentlemen of England in parliament would find in their hearts to truſt fit perſons, as the chiefs of the law for inſtance, (who, by their publick ſtations, are anſwerable to all mankind for their behaviour) taking whom they would to their aſſiſtance, and act, debate, and hear in public; to draw up a law out of particulars, as the ancient way was, and then, unleſs groſs miſtakes are ſhewed, to paſs it upon their authority, there would be ſome hopes of an effectual regulation, in a multitude of particulars that all agree need

it. And it is believed that the *vetera ſtatuta*, or ancient laws were ſo made, by the judges and great men, in vacation of parliament, either purſuant to petitions, before, or afterwards, authenticated there; otherwiſe they could not have been framed ſo orderly, conciſe, and proper as they are. I muſt not enlarge upon theſe ſubjects here, leſt I anticipate the proper place of them, or, what is worſe, repeat when I come there.

Endured no diſcourſe of cauſes depending.

But, as to his lordſhip's method of trying cauſes, in which his juſtice was moſt conſpicuous, it may be well conceived that he, who, as a pleading counſel, had run through the whole courſe, and had all poſſible experience of that practice, and being, withal, capable and upright, as he was, coming to ſuperintend others, muſt needs be a maſter workman. Who ſo fit to command in the place of general, as he who had trailed the pike, and was, afterwards, through all the ſervices of war, advanced to the poſt of chief? In the firſt place, he would not endure that, in private converſation, with, or about him, any one ſhould ſpeak of cauſes depending in his court. It was ſaid of a great maſter of painting, Lely, that he would not willingly ſee a bad picture; for he never looked upon one, but it tainted his pencil: ſo there can be no diſcourſe of a controverſy, which doth not leave a tinct of prejudice. A man cannot read of ſuch matters, nay, overlook gameſters, without

entering into party. Juſtice therefore ſhould be deaf, except in the ſeat, and blind there. Sometimes, very great men would be ſo overſeen, as to ſpeak to him of cauſes, whom he could not ſlight; and, to ſuch, his carriage was paſſive, ſhewing reſpect, but ſaying nothing, or what ſignified as little; and he ever ſuſpected a cauſe that uſed ſuch means, and hath often reflected on them in court. The gentleman (the Hon. Roger North) whom his lordſhip favoured to be almoſt continually in his converſation, and even to ride with him, in his coach, to and from his courts, when he ſat upon trials, had the honour of his lordſhip's expreſs declaration that, *in all the courſe of his practice under him, he never ſpoke privately of any cauſe depending:* which, conſidering the conſtant ſociety, and familiarity, few would imagine; but I can affirm it to be critically true.

Conduct in trials.

Next, in his lordſhip's conduct of trials, he was very careful of three matters. 1. To adjuſt what was properly the queſtion, and to hold the counſel to that; for he, that has the worſt end of the ſtaff, is very apt to fling off from the point, and go out of the right way of the cauſe. 2. To keep the counſel in order; for, in trials, they have their parts and their times. His lordſhip uſed frequently to inculcate to counſel the decorum of evidencing practice. 3. To keep down repetition, to which the counſel, one after another, are very propenſe; and, in ſpeeching

to the jury, one and the ſame matter, over and over again, the waſte of time would be ſo great that, if the judge gave way to it, there would ſcarce be an end; for moſt of the talk was not ſo much for the cauſes, as for their own ſakes, to get credit in the country for notable talkers. And his lordſhip often told them that their confuſed harangues diſturbed the order of his thoughts; and, after the trial was over, it was very hard for him to reſume his method, and direct the jury to compriſe all the material parts of the evidence. Therefore he was poſitive not to permit more than one counſel of a ſide to ſpeech it to the jury, by way of ſumming up the evidence; and he permitted that in ſuch a way as made them weary of it. For, in diverſe ſorts of trials, he wholly retrenched it; and where he obſerved much ſtiffneſs, and zeal of the parties in a cauſe, then, after the evidence was over, he would ſay, *Come, make your ſpeeches*; and then ſat him down: and that looked with a ſort of contempt of their talents, which gave them a diſtruſt, and diſcompoſed their extempore ſo much that, for the moſt part, they ſaid, *No, we will leave it to your lordſhip.* And thus the abuſe, by faſtidious talk, wore away; and the practice, before him, was ſo well known, as it became, at length, a pure management of evidence, and argument of law.

He made a great difference in the nature Temper in detecting frauds.

of cauſes; for if there was a ſuſpicion of fraud, falſe dealing, or forgery, he was a moſt ſtrict examiner, and would canvaſs the evidence to a ſcruple, giving all latitude to the counſel to refine, and ſuggeſt where he might, if poſſible, lay hold of a thread, in order to gain a clear ſolution of the fact: For it was not enough that he, in his private opinion, thought a deed forged, or the like; but he muſt have evidence, by the force of which he might ſhew it ſo plain as would ſatisfy the auditory, as well as the jury. And, after all, if he could not arrive at that, he let it go, and directed the jury upon the caſe, as it ſtood upon the evidence, whatever it was. I wondered, once to find him, after an hour's ſticking and picking upon an evidence, at laſt, all at once, give it up. I aſked him, *Why he left off ſo abruptly?* He told me, that he diſcerned a roguery; but the evidence was not ſufficient to juſtify him to direct the jury to find it: and, thereupon, he directed as the ſtrength of the evidence required to find, even contrary to his own private judgment. For, in points of fact, whereof he was neither judge nor witneſs, he muſt have warrantable reaſons for what he ſaid, or inſinuated to the jury, who only were the proper judges; and the rather, becauſe they ſeldom found againſt his deciſive directions; and his ſuſpicions were not to guide their verdict upon oath. But, in other ſorts of cau-

ſes, as about boundaries, ditches, ways, trees, and the like, which depend upon mere teſtimony, and not ſagacity and penetration, for extracting facts out of circumſtances, he took leſs pains, and, after the queſtion was ſtated, he uſed to ſay, *call your witneſſes*; and ſat down till ſomething called him to obſerve. He allowed no croſs examining, till one ſide had done with the witneſs; nor would he allow the defendant to ſay any thing, but only to croſs examine, till the plaintiff had made an end; and then he heard the defence at large, and did not allow the plaintiff to interpoſe, but in the ſame manner; and always took care that the counſel examined all their witneſſes, till they ſaid they had no more: knowing that a countryman never thinks his cauſe tried, unleſs all his witneſſes are heard.

He was very good at way-laying, and diſappointing the craft of counſel; for he, as they ſay, had been in the oven himſelf, and knew where to look for the party. Serjeant Maynard was a very able practiſer, and uſed to lay traps for the judges, and very cunning ones; but if he diſcerned that he was obſerved, he ſtreight gave it up, and contended not upon a fallacy, which he foreſaw would be reſolved. Sir William Jones ſometimes came before his lordſhip, at the *niſi prius*, and uſed art enough, and was very angry when it did not ſucceed: As, for inſtance, by ſuch forms as theſe ——

Supplanted the arts of counſel.

If (my lord) we prove ſo and ſo, —— then, ſo and ſo —— and, after that, wait for the judge's anſwer. If the judge ſaid, *Ay, if you prove that indeed, then, &c.* the lawyer concluded the jury was prepared ſo far; and if, in the courſe of his evidence, he could charm them to think he had proved that matter, although not ſufficiently, he carried the cauſe: at leaſt, in the proceeding, he ſo entangled the judge, that he could ſcarce get clear. His lordſhip in ſuch caſes, always declined anſwering any thing, but ſaid only, *Call the witneſſes, and prove what you can.* Then the counſel at it again: *but if we prove* —— *When you have proved,* ſaid the judge, *I will tell you what I think and not before.* For his lordſhip knew that way of evidencing to be a ſure ſign that the proof did not come up to the point; and ſo muſt be ſupplied by opening and conceſſions before-hand. This was one of the chief arts practiſed by Sir William Jones, upon trials at law; which the judges meeting with, in the manner I have mentioned, uſually put him out of temper.

A raſed and forged acquittance, diſcovered.

It would be endleſs to ſhew all the remarkable trials that came before his lordſhip: I ſhall therefore, only as a diverſion, ſubjoin one or two of them. Once, a cook brought an action, againſt one Mr. Grant, of the Inner Temple, for diet delivered in his chamber. This Grant had a brother and a mother; and they dieted together in

this chamber. At the trial, the defence was, that the other brother by agreement, was the houſekeeper, and was to pay for the proviſions; the reſt did but diet with him; and the mother was the witneſs to prove it: ſo the cook had miſtaken his cuſtomer. But his lordſhip was of opinion, that the owner of the chambers was the houſe-keeper, as to all foreigners, who look upon, and truſt, the viſible owner, whatever the agreements, among themſelves, may be. Then they ſaid they would prove the cook paid off to 1677, and gave him his acquittance. The cook ſtarted forth from the croud; and, *My lord*, (ſaid he, very quick and earneſt) *I was paid but to* 1676. At that moment his lordſhip concluded the cook ſaid true; for liars do not uſe to burſt out in that unpremeditated manner. This was one of his lordſhip's marks, whereby he judged of men's ſincerity; and it ſeldom failed him. Having therefore this opinion of the fact, he eyed the acquittance thoroughly, and ſaw 77 as plain as could be. He aſked the cook, again and again, if he was ſure; to ſee if he would ſtammer or heſitate, as lyars will often do; but his anſwer was blunt and poſitive, as before. Then his lordſhip, in the *niſi prius* court in London, ſitting under a window, turned round, and looked through the paper againſt the light; and ſo diſcovered plainly the laſt figure in the date of the year, was 6,

in raſure; but was wrote ſeven with ink. He made the jury look through it, as he did; and the cauſe was, in that point alſo, determined for, which elſe, had gone againſt, the poor cook. The moral, of all this, may be that *falſity is never ſafe.*

Of a comical action, brought by Serjeant Maynard.

Mr. Serjeant Maynard had a mind to puniſh a man who had voted againſt his intereſt in a borough in the weſt, and brought an action againſt him for ſcandalous words, ſpoke at a time when a member, to ſerve in the Houſe of Commons for that borough, was to be choſen. And after his great ſkill, he firſt laid his action in the county of Middleſex; and that was by virtue of his privilege, which ſuppoſes a ſerjeant is attendant on the court of Common Pleas, and not to be drawn from the county where the court ſat. And then, in the next place, he charged the words in Latin, that, if he proved the effect, it would be ſufficient; whereas, being in Engliſh, they muſt prove the very words to a tittle; and thoſe were a long ſtory that uſed to be told of Mr. Noy, and all the cock lawyers of the weſt. And this was tried before his lordſhip at the *niſi prius*, for the Common Pleas for Middleſex. The witneſs, telling the ſtory, as he ſwore the defendant told it, ſaid that a client came to the ſerjeant, and gave him a baſket of pippins, and every pippin had a piece of gold in it. *Thoſe were golden pippins*, quoth the judge. The

ſerjeant began to puff, not bearing the jeſt: ſo the witneſs went on. And then, ſaid he, the other ſide came and gave him a roaſting pig (as it is called in the weſt) and, in the belly of that, there were fifty broad pieces. *That's good ſauce to a pig*, quoth the judge again. This put the ſerjeant out of all patience; and ſpeaking to thoſe about him, *This*, ſaid he, *is on purpoſe to make me ridiculous*. This ſtory being ſworn, the judge directed the jury to find for the ſerjeant; but in the court, the judgment was arreſted, becauſe the words were but a land ſtory, and went, as mere merriment, over ale, without intent to ſlander. *Such bitterneſs flows from the ſour ſpirits of old pretended republicans.* It had been well if no other inſtances, but ſuch as this, were extant to ſhew it. This happened when I attended; and ſo, know the matter to be, as above, literally true. But it is hard to believe that ſuch a poor revenge could have been put into act by ſo great a man. And I ſhould almoſt diſtruſt myſelf, if I had not been partaker of a more wretched come-off with the ſame perſon; which I ſhall relate, conceiving it to be full as material to ſhew little things of great men, as great things of little men. One afternoon, at the *niſi prius* court of the Common Pleas, in Weſtminſter Hall, before the judge ſat, a poor, half-ſtarved, old woman, who ſold ſweetmeats to ſchoolboys and footmen, at the end of the bar, deſired the

ſerjeant to pay her two ſhillings, for keeping his hat two terms. She ſpoke two or three times, and he took no notice of her; and, then, I told the ſerjeant, *the poor woman wanted her money, and I thought he would do well to pay her.* The ſerjeant fumbled a little, and, then, ſaid to me, *lend me a ſhilling.* *Ay, with all my heart,* quoth I, *to pay the poor woman.* He took it, and gave it her; but ſhe aſked for another. I ſaid, *I would lend him that alſo, to pay the woman. No, dont boy* (ſaid he) *for I never intend to pay you this.* And he was as good as his word; for, however he came off with that woman, having been, as they ſay, a wonderful charitable man, I am ſure he died in my debt. But, in this manner (as I gueſs he intended) I ſtood corrected for meddling.

Of his rigors, and value.

This great man, as I muſt call him, ſince his natural and acquired abilities, and the immenſe gains he had by practice, juſtly entitle his name to that epithet, was an anti-reſtauration lawyer. In 1684, I heard him ſay in the court of Chancery, of a cauſe then at hearing, that he was a counſel in that cauſe in the year 1643. His name is in Crook's reports, in 3 Car. His actions, in the rebellious times, made the act of indemnity ſmell ſweet. And, afterwards, he had the cunning to temporiſe, and get to be made the king's eldeſt ſerjeant, but advanced no farther. His lordſhip muſt needs have much converſation, as well as

intercourſe in buſineſs, with this eminent practiſer in the law; but, as in other caſes of adverſe party-men, ſo here, there could be no cordial friendſhip between them; but a fair and reaſonable correſpondence there always was. The ſerjeant ever took in with proceedings that maligned his lordſhip; but he never outwent diſcretion, ſo far as ſome did to appear directly, and nominally, againſt him, which muſt have certainly reſcinded all kind of correſpondence. When his lordſhip ſat in the chair of the Common Pleas, he practiſed under him, and had always the reſpect due to his known abilities. But though the ſerjeant never failed to conform to all things required of him in publick, as oaths, and teſts, &c. yet, for all that, he continued a favourite in the Preſbyterian congregations; and is at this day, among them, extolled as a ſaint, and his wonderful charities, and other good works, related: and, to give him his due, he was, to his laſt breath, at the bottom, true, as ſteel, to the principles of the late times, when he firſt entered upon the ſtage of buſineſs. And, whatever we, that were frequently at his elbow, knew of his ſaint-like adminiſtration of himſelf and his wealth, it is fit to be ſilent, becauſe we ſhould not ſpeak ill of the dead. And, in that tendency, I ſhall only obſerve farther of him, that he practiſed before his lordſhip in all the king's courts where he had ſat as judge; and,

being an artful, as well as learned, lawyer, would lay notable ſnares; but, when diſcovered, never perſiſted, but ſat down; and, for the decorum of bar practice of the law, was an excellent pattern, and held a fair correſpondence, and uſed a decent reſpect towards his lordſhip all his time.

Intereſt in the weſt.

Now it is high time to bring his lordſhip forward, into that part of his office that requires him to be a judge in the country circuits; which is all the ſhadow we have of the ancient iters, which, now, are reſtrained to the crown law wholly, except the commiſſion of aſſizes and *niſi prius*, which come in by ſtatute proviſion. But, anciently, the judges itinerants were for all pleas which, after the conqueror had taken cogniſance of the debts of the laity to his own court, was a great eaſe to the country, who, for their greater matters, muſt have followed the king's court, whereſoever he might happen to be. His lordſhip had no charge of determining capital offences, but here; and that was one thing which made him eſteem his office in the Common Pleas ſo much: whereas the chief juſtice of the King's Bench hath almoſt continually that kind of work upon his hands. He made the weſtern circuit his choice; not for the common cauſe, it being a long circuit, and beneficial for the officers and ſervants, but becauſe he knew the gentlemen to be loyal and conformable, and that he ſhould have

fair quarter amongſt them. And in that he was not miſtaken; for, after a few circuits paſſed over, they found his meaſures and their deſires conſonant in all things; whereby he became not only well accepted, but did alſo contract a ſort of alliance and ſtrict friendſhip with much the greater, and moſt conſiderable, part of them. And that intereſt ſtood him in good ſtead, in time of need: for ſo conſiderable a body, and ſo united, as the weſtern gentlemen in parliament were, did ſo firmly enſconce him, that his enemies could never yet get a clever ſtroke at him. Dr. Mew, late Biſhop of Wincheſter, whom (from a black plaiſter, he always wore on his cheek, to cover a place where, in the late wars, he had been wounded) they called Patch, in his ſtiff way, uſed to ſay that the Lord Chief Juſtice North was *deliciæ occidentis* or the darling of the weſt. But once his lordſhip, and all of us of his train, had like to have come off but poorly at Exeter aſſizes. It was well for us that we were known there, or to pot we had gone. It will be gueſſed that ſomething comical is coming; and really ſo it is, and fell out thus. There was one Mr. Duke, a buſy fanatic, whom old Sir Edward Seymour, father of the late ſpeaker, uſed to call Spirit Po; that is, a *petit diable*, that was preſto at every conjuror's nod. He was a common runner up and down on factious errands; and there could not be a

meeting in the country, for buſineſs or mirth, but Spirit Po was there. This gentleman, with irreſiſtible importunity, engaged the judges to take a ſupper, and lie at his houſe in the way to Exeter. It was impoſſible we could reach ſo far that night; and his lordſhip was not averſe to ſeeing variety of gentlemen's ſeats in the country; and that was (juſtly) reputed a neat one: ſo, little ſuſpecting what happened, we complied. All things, but one, were well; and that was very unexpected and rude. The gentleman had not the manners to engage the pariſh miniſter to come and officiate with any part of the evening ſervice before ſupper; but he himſelf got behind the table in his hall, and read a chapter, and then a long-winded prayer, after the Preſbyterian way. The judges took it very ill, but did not think fit to affront him in his own houſe. Next day, when we came early in the morning to Exeter, all the news was that the judges had been at a conventicle, and the grand jury intended to preſent them and all their retinue for it; and much merriment was made upon that ſubject.

The Cob of Lyme, in Dorſetſhire.

Beſides ſeeing the moſt conſiderable ſeats of the nobility and gentry, in the countries where he went; which, to ſay truth, he could not well avoid, being ſo much invited, and nobly entertained as he was; not more out of the ordinary reſpect paid to judges, but as one of his majeſty's beſt friends,

and whom they regarded, not more on account of his quality, than for his perſonal character and qualifications, which had entitled him to their eſteem and friendſhip. His lordſhip took the opportunity to join thereunto an inſpection of ſuch curioſities as were famed in the ſeveral countries he paſſed thorough; as, in particular, the Cob at Lyme, a ſmall port in Dorſetſhire, that is ſituate in the Cod, (as they term it) of a bay, where there was no river, or land-lock, provided by nature to prevent the certain loſs of ſhips at anchor there; and, of all places upon the coaſt of England, leaſt to be ſuſpected for a good port: but art and induſtry will do wonders; for all the requiſites of a ſafe harbour are ſupplied by this Cob. The ſmall veſſels, which ſerve the trade of the town, conſiſting chiefly in woollen manufacture of that country, carry on the trade outwards; which is very beneficial. And, in that reſpect, King Charles II. allowed, out of the cuſtoms of that port, 100*l.* per annum towards the charge of maintaining the Cob. But whether the ſame be continued or begged off, I know not. His lordſhip had the compliment of a ſhip maſter, who cleared his veſſel, and came to an anchor without the Cob, and invited him to come on board and take a turn at ſea; which he accepted, and we went on board and, weighing anchor, ſtood weſt about an hour and a half, and then returned

and landed at the Cob; and ſurely a moſt delicious turn it was, for the weather favoured us. The Cob is a mole built in the ſea, about two furlongs from the town, and named from the cobble ſtone, of which it is compiled. There is not any one like it in the world: for though it is an immenſe maſs of ſtone, of the ſhape of a demilune, with a bar in the middle of the concave, no one ſtone, that lies there, was ever touched with a tool, or is bedded in any ſort of cement; but all, being pebbles of the ſea, are piled up, and hold by their bearings only, and the ſurge plays in and out, through the interſtices of the ſtone, in a wonderful manner. That this muſt often decay, is certain; for the beſt cemented ſquare ſtone will ſcarce hold againſt the ſurge. But there is warning enough to alarm the town to repair, and, thereby, to prevent any great ruin of it; for, ſometimes, a ſwamp will appear in the flat top where they walk; and, when that is perceived, they go to work, and take down all that part, and build it up from the bottom; and nothing leſs will prevent the downfal of much more, ſooner or later, as the ſeas rage more or leſs againſt it. And it may happen that ſome new foundation ſtones are to be laid. Thoſe are of the largeſt ſort that can be got; and they ſearch them out upon the coaſt, and, mounting them upon caſks chained together, with but one man mounted upon

them, he, with the help of a pole, conducts it to the place where it is to lie, and then, ſtriking out an iron pin, away go the caſks, and the ſtone falls in its place. The veſſels of burthen are loaden and unloaden by horſes, turning and returning upon the ſand, between the Cob and the town: and they have no drivers, but are charged with bales (for inſtance) at the warehouſe, and away they trot to the ſhip ſide, and ſtand fair, ſometimes, above the belly in water, for the tackle to diſcharge them; and then, they gallop back to the warehouſe for more; and ſo they perform the tide's work, and know, by the flood, when their labour is at an end. I muſt own, I could ſcarce have believed this deſcription, if I had not ſeen the place, and the poor horſes at work: and I cannot but wonder that our topographers have taken no more notice than they have done of it. And it is not the only obvious curioſity in England that the beſt of them have left out.

Harbours in the weſt channel.

His lordſhip viſited the town of Pool, the place that gave the ſpring to quo warranto's, as is related in the Examen. In that harbour the ebb and flood work alternately every ſix hours; and his lordſhip was informed that the like was obſerved in the ports of Southampton and Chicheſter: but nothing ſo regular and ſtrong as here; and, being inquiſitive into the reaſon of it, he was told that the ebb at low water, between

Hampſhire and the Iſle of Wight, run ſo ſtrong that it ſhot into the harbour of Pool lying in the line of its courſe; ſo that when it was low water at Hurſt, it was high water at Pool. It appears by all the harbours of this coaſt, that the convenience is owing to a large inlet of water, within the land, every tide; which, venting at low water, ſcours the channel. It is wonderful that, at Yarmouth, they do not provide to pen in a back water rather than build promontories which ſhall fill up faſter than they can build, and ſo, literally, make ropes of ſand.

Great organ at Exeter.

His lordſhip, agreeably to his great maſterſhip of muſick, took great notice of the organ in the cathedral church at Exeter, where the two ſide columns, that carry the tower, are lined with organ pipes, and are as columns themſelves. His lordſhip deſired the dimenſions of the great double diapaſon; and the account, as returned, is thus.

	F.	*I.*
Speaking part long -	20	6
Noſe - - - -	4	0
Circumference -	3	11
Diameter - - -	1	3
	Hogſ^{ds}	Gall^{s}
Content of the ſpeaking part	3	8
	lb.	
Weight - - -	360	

This is heard plainer at a diſtance than when near, as alſo louder: and, behind that, and the other large doubles, are placed large wooden pipes to help them into their ſound, which otherwiſe, would come on very ſlow, or, perhaps, not at all. One, being near enough, may by the touch of the hand, diſcern when it ſpeaks and when not. How it is tuned, whether by meaſure or the beats, we were not informed; and, bating their account of it, which was curious and diverting enough, I could not be ſo happy to perceive that, in the muſick, they ſignified any thing at all, but thought them made more for oſtentation than uſe: for there are terms in ſound which will not be exceeded; for, when the vibratory pulſes are ſo ſlow as may be diſtinguiſhed, ſound vaniſheth; which is, nearly, the caſe of this great pipe. His lordſhip was always well pleaſed when his ſtages lay ſo that the Sunday was ſpent in a cathedral town. For he was always affected with the church ſervice, and had the books of the hymns and anthems always brought to him.

Plymouth and Mount Edgcomb.

His lordſhip went down to Plymouth, and ſaw the town which, as other marine towns, is crowded together, and the ſtreets are narrow. But the fort, which was built by King Charles II. with the marble of the place, and lime of the ſame ſort of ſtone burnt, is a worthy ſpectacle, eſpecially for its glorious proſpect, overlook-

ing the harbour which conſiſts of two waters, one called Hamoſe, and the other Catwater. And, as the voyage is out or home, the ſhips are moored in one or other; becauſe, then, whatever wind ſerves for the voyage, takes the ſhip out of the harbour; which is a perfection that few, if any, ports in the world can boaſt of. All this lies below the caſtle, and in view of the fort, being ſeen as in a map, or, rather, a flying proſpect; and ſhips, under ſail, look like cockboats. So high above them is the fort mounted. Oppoſite to the caſtle lies Mount Edgcomb, where his lordſhip and his company were nobly entertained by Sir Richard Edgcomb, whoſe lady was a near relation. The hall riſeth, and is lighted above the reſt of the houſe that turns round it; which the architects call a Grecian hall. The park, on more than three ſides, is paled with the ſea; and the deer-hunting is as much by water as by land. I ſtole from the company, and walked to the cliff towards the main, and found means to get down, and paſſed on hideous rocks towards the ſea; but, returning, I thought I ſhould never have gained the top again. Such a vaſt height was I ſurpriſed with in my aſcent.

Cornwall. There was no opportunity of penetrating into Cornwall yet, becauſe the judges, for compendium of travel, took the firſt town, upon the borders, capable of receiving them; which is Launceſton, where is an old ruined

caſtle, and nothing elſe worth naming. The Corniſh men are very fierce and contentious, and ſtrangely given to indict one another. The traverſes of theſe indictments, tried at the aſſizes, make good fodder for the lawyers; for they are always many, and beyond what are had in moſt of the circuit beſide, and well-metalled cauſes. But this, as they ſay, prevents bloodſhed; which would follow if revenge had not that vent. The trade, here, lying moſtly with Londoners and foreigners, the people have a better Engliſh dialect than thoſe of Devonſhire, whoſe common ſpeech, I think, is more barbarous than in any other part of England, the north not excepted. We were told that Saltaſh, three miles up the river from Plymouth, was, anciently, the port town; for, in old time, ſo high within land was ſafer than nearer the ſea: and well it might be ſo to ſmall veſſels. But ever ſince ſhips have been built larger, partly for better roads, and partly for better pilotage, the port towns have crept nearer the main; as they ſay would happen upon the Tyne; and Shields would become the port town, if Newcaſtle had not a privilege that no common baker, or brewer, ſhall ſet up between them and the ſea.

Taunton Dean, Wells, and Briſtol.

The return from the circuit was uſually by Taunton-Dean in winter, and by Wells and Briſtol in ſummer. Both of them are great towns, and, to ſtrangers, very remark-

able. The latter is the cathedral of the biſhop of Bath and Wells; the other a very populous, but, withal, a rugged unhewn town, and the roads of the country mere cauſeways of ſharp flints. Near this place were two great families, one called Orchard Portman, the other Orchard Windham, at both which places, his lordſhip had princely entertainment. The places, noted to be ſeen there, are Oaky Hole, Chedder cliffs, and Mendip hills. But I ſhall not ſtay to deſcribe them, but make for Briſtol, which is a marine trading city, with a ſmall cathedral. It is remarkable there, that all men, that are dealers, even in ſhop trades, launch into adventures by ſea, chiefly to the Weſt India plantations and Spain. A poor ſhopkeeper, that ſells candles, will have a bale of ſtockings, or a piece of ſtuff for Nevis, or Virginia, &c. and, rather than fail, they trade in men; as when they ſent ſmall rogues taught to pray, and who accordingly received, actual tranſportation, even before any indictment found againſt them; for which my Lord Jeffries ſcoured them, as is related elſewhere. In a word; pride and oſtentation are publickly profeſſed. Chriſtenings and burials pompous beyond imagination. A man, who dies worth three hundred pounds, will order two hundred of it to be laid out in his funeral proceſſion.

Incidents there.

His lordſhip was there in ſummer, 1680, which was next before that ſeſſion of parlia-

ment that purſued the abhorrers; and, as the times then ſhewed ſome dawnings of loyalty to the crown, it appeared more in Briſtol than one would have expected. One Floyd was there, a true Welſhman, as I believe; for I never ſaw or heard any human thing ſpeak ſo lofty as he did, and all in humour and tags of Latin. He declared for *ſub* and *ſupra*, and much more at that rate. There was one Row in office of ſwordbearer; which, in that town, is pronounced ſorberer. I thought it ſounded like Cerberus; and not amiſs, for the fellow was deep in the Rye plot, for which he fled. He was ſtrangely ſaucy and impertinent in his office. And once the judge looked back for one of his ſervants, and he comes forward, and *I'll wait on your lordſhip*, ſaid he. *You wait on my lord, Sirrah*, ſaid the mayor? *you ſhall wait upon me, and I'll wait upon my lord.*

Account of Bedloe's examination.

His lordſhip eſcaped a ſcouring here in the year in which Oates's plot raged. For Captain Bedloe came down to the aſſiſes with a deſign to enter into his lordſhip's converſation, and, what with diſcoveries, and pretended diſcoveries, to have put the ſham plot upon him; as, probably, he had done if Providence, and his uſual forecaſt and caution, had not kept him at a diſtance. I am not concerned to diſplay the particulars here, becauſe they are fully related in the Examen; but however think it proper to inſert his lordſhip's narrative for the ſake of

his juſtification in this affair, in his own words, as he ſent it to Secretary Jenkins, with his letter.

His lordſhip's narrative.

" *Account of the examination of Captain Bed-*
" *loe at Briſtol, 16 Auguſt, 1680, given*
" *to the Houſe of Commons.*

" At my firſt coming to Mr. Rumſey's,
" where I was to lodge at Briſtol, upon
" Monday the 16th day of Auguſt, in the
" afternoon, being the firſt day of the aſſiſes,
" Sir John Knight came to me and ſaid that
" Mr. Bedloe lay dangerouſly ill of a fever,
" and had little hopes of life, and deſired
" that I would give him a viſit, that he
" might impart ſomething of great conſe-
" quence before his death.—I told him I
" would give him a viſit that night after
" ſupper about nine o'clock, if I might be
" ſatisfied of two things: firſt, that there
" was no infection in his diſtemper: ſe-
" condly, that the time would not be in-
" convenient, but he might diſcourſe to me
" without prejudice to his condition. After
" a little while his phyſicians came to me,
" and aſſured me there was no danger of
" infection, and the time I had appointed
" would be moſt proper, for, commonly
" he took his repoſe in the afternoon, and
" at nine o'clock he would in probability
" be refreſhed, and fit to diſcourſe with me.
" ——Thereupon I declared my reſolu-

" tion of going; and deſired the company
" of the two ſheriffs, and my brother Roger
" North, and appointed my marſhall Wil-
" liam Janes to go with me. As we were
" upon the way, Mr. Croſsman, a miniſter
" in that city, told me Mr. Bedloe had de-
" ſired him to come with me to him. I ſaid
" it was very well, and I ſhould be glad of
" his company. Whereupon we went all
" together, and being come into the room
" where Mr. Bedloe lay, I ſaluted him, and
" ſaid, I was extreme ſorry to find him ſo
" ill. I did imagine he had ſomething to
" impart to me as a privy counſellor, and
" therefore, if he thought fit, the company
" ſhould withdraw. He told me, that
" needed not yet, for he had much to ſay
" which was proper for the company to
" hear: and having ſaluted the ſheriffs, and
" Mr. Croſsman, he began to this purpoſe.
" That he looked upon himſelf as a
" dying man, and found within himſelf
" that he could not laſt long, but muſt
" ſhortly appear before the Lord of hoſts
" to give an account of his actions; and be-
" cauſe many perſons had made it their
" buſineſs to baffle and deride the plot, he
" did, for the ſatisfaction of the world, then
" declare upon the faith of a dying man,
" and as he hoped for ſalvation, that what-
" ſoever he had teſtified, concerning the
" plot, was true; and that he had wronged
" no man by his teſtimony, but had teſtified

Bedloe's ſpeeches in diſcourſe.

" rather under than over what was truth;
" that he had nothing lay upon his con-
" ſcience upon that account, that he ſhould
" appear chearfully before the Lord of hoſts,
" which he did verily believe he muſt do in
" a ſhort time.———He ſaid he had many
" witneſſes to produce who would make the
" plot as clear as the ſun, and he had other
" things to diſcover which were of great
" importance to the king and country;
" hereupon, he making ſome pauſe, I told
" him the plot was ſo evidently made out,
" that no reaſonable man, no proteſtant, I
" was ſure, could doubt of the truth of it;
" but he ought not to conceal any thing
" that concerned the king ſo highly: he
" ought to diſcloſe his whole knowledge in
" matters of treaſon, that traitors may be
" apprehended, and ſecured, who otherwiſe
" may have opportunity to execute their
" treaſonable deſigns.——To this he replied
" that much of that which he had not diſ-
" covered, was to corroborate his former
" teſtimony; that he had concealed nothing
" that was abſolutely neceſſary to the king's
" preſervation; that he thought not fit to
" accuſe more perſons till he had ended
" with thoſe he had already accuſed. He
" expreſſed great grief and trouble at the
" condition of his poor king and country (ſo
" he termed them) whom he knew at that
" time in imminent danger from the jeſuits,
" who had reſolved the king's death, and he

" was ſure they would ſpare him no longer
" than he continued to be kind to them.
" He ſaid he was privy to their conſultations
" at Salamanca and Valladolid, where they
" uſed to obſerve the favourable conjuncture
" they had to introduce their religion into
" England; which conſiſted in their having
" a head, who muſt be ſet up whatſoever
" came of it, and if they let ſlip that oppor-
" tunity they ſhould never have ſuch ano-
" ther; for, without an head, they could do
" nothing. He ſaid farther, he knew the
" wickedneſs and reſolution of jeſuits, they
" ſtuck at nothing to compaſs their own
" ends. They had attempted to poiſon him,
" but he had eſcaped.

" When he had finiſhed this diſcourſe Manner of his examination.
" (which laſted about a quarter of an hour)
" I aſked him if the company ſhould now
" withdraw, and he ſaid, yes; and ordered
" his nurſes to go out, and only his wife to
" ſtay to tend him. And thereupon all
" went out, ſaving Mrs. Bedloe and myſelf,
" and my ſervant William Janes. Then I
" told him I thought it convenient that what
" he ſhould ſay unto me ſhould be upon
" oath; he replied, it was neceſſary it ſhould
" be ſo, and called for a Bible; but my ſer-
" vant having brought a book with him,
" adminiſtered the oath to him, and, laying
" his paper on a chair by the bed-ſide, wrote
" down his depoſition as he delivered it.---
" ---When Mr. Bedloe had concluded, and

" ſaid that was all he had to inform me of,
" I took the paper, and read it over to him
" diſtinctly, and he approved it, and ſigned
" it, laying the paper upon a pillow, I
" thought it not fit, conſidering his condi-
" tion to perplex him with queſtions, but
" took his information as he offered it, and
" held no diſcourſe with him when the com-
" pany was withdrawn, but concerning the
" true ſetting down his depoſitions. And
" when he ſeemed to be weary, to mind
" him of taking cordials, which his wife
" reached to him as he deſired them.

Copy refuſed. " The next day Mr. Bedloe's brother
" came to me, and told me his brother de-
" ſired a copy of the depoſition he had
" made before me, but I told him I had
" well conſidered it, and could not give
" him a copy without the king's leave, but
" I would move the king in it, and, if he
" gave leave, I would take care to ſend one
" to him; and Mr. Bedloe's brother told
" me, that it was his brother's deſire that I
" ſhould recommend to his majeſty his
" condition; that his ſickneſs was very
" chargeable, and move his majeſty for
" ſome ſupply of money for his ſubſiſtence,
" which I promiſed to do.---This is all I can
" recollect of what paſſed upon this occaſion,
" and is in ſubſtance true, but the very words
" or order I cannot remember.

" *Letter to Mr. Secretary Jenkins.*

" Sir,

" I always intended to write from hence, to pay my thanks for the whole circuit, which was much more pleaſant by your favour of holding a correſpondence with me, but now I have ſome buſineſs of importance——for as ſoon as I came to this city, I received a letter from Mr. Bedloe by Sir John Knight, that he being very ill, and in the judgment of phyſicians in great danger of death, had ſome buſineſs of great moment to impart to me. I, knowing the man and the ſeaſon, would not refuſe the pains to give him a viſit; and being ſatisfied by phyſicians that there was no contagious quality in his diſtemper (though I did not much fear it) I went well accompanied; and, in the preſence of the company, he declared that whateverhe had ſaidconcerning the plot,was true,and he, being a dying man, had nothing lay upon his conſcience on that ſcore. The greateſt trouble he had,was the danger the king, whom he loved above all things, was in from the papiſts at this time, who would attempt his life, as ſoon as ever he ſhould ceaſe to be kind to them. After I had aſked him if he had any thing to impart to me in private; he told me he had, and having made the company withdraw, all but Letter to the ſecretary.

" my clerk, I took the incloſed examination
" upon oath. You may imagine I was not
" curious to perplex him with queſtions, I
" took it juſt as he delivered it, of what
" ſignification it will be, I leave to wiſer
" men. I think it my duty to ſend it to
" you that you may inform his majeſty of
" the truth. I ſhall wait upon you at
" Windſor upon Sunday next, to receive
" your farther commands.——Ten at night;
" the copy incloſed ill taken; I ſhall bring
" the original with me.

The examination of Captain William Bed-
" *loe taken upon oath before the Lord Chief*
" *Juſtice North at Briſtol,* 16 *Auguſt,*
" 1680.

" The examinant ſaith that the Duke of
" York hath been ſo far engaged in the
" plot, as he hath ſeen by letters in Car-
Examination " dinal Barbarini's ſecretary's ſtudy, that no
itſelf. " part hath been proved againſt any man
" already that hath ſuffered, but that to
" the full thoſe letters have made him
" guilty of it all but what tended to the
" king's death.——At Rome I aſked father
" Anderton and father Lodge, two jeſuits,
" what would the Duke do with his bro-
" ther when he was king? And they an-
" ſwered me they would find means for
" that, they would give him no trouble
" about it.——Then I told them I believed

" the Duke loved his brother ſo well, he " would ſuffer no violence to be done to " him, they ſaid no; if the Duke could be " brought to that, as he had been religi- " ouſly to every thing elſe, they might do " their work, their other buſineſs was ready, " and they might do it preſently, but they " knew they could not bring him to that " point; but they would take care of that " themſelves; they had not begun with " him to leave him in ſuch ſcruples as " that, but they would ſet him into his " throne, and there he ſhould reign blind- " fold three or four days, for they had ſet- " tled ſome, they ſhould pitch the action " upon, who ſhould clear their party, and " then he ſhould fly upon them with the " ſword of revenge. And this examinant " doth further add, that the queen is not, " to this examinant's knowledge, nor by " any thing he could ever find out, any " way concerned in the murder of the " king; but barely by her letters conſent- " ing and promiſing to contribute what " money ſhe could to the introducing " the catholic religion: nay, it was a great " while, and it made her weep, before ſhe " could be brought to that."

Imprimatur

10th Nov. 1680. WI. WILLIAMS.

As to the true intent and deſign of this expedition to Briſtol, I ſhall ſay nothing

The private intent of this expedition,

as far as it concerned his lordſhip.

here, becauſe it is fully accounted for in the Examen. But as to his lordſhip's private concern in particular, it is to be known that nothing was more deſired by the party, than to remove him (who was an inflexible loyaliſt) out of their way; and, in order to that, to faſten ſome trapan upon him, or get ſome advantage of charging him with matter of diſcouraging, ridiculing, tampering, or ſtifling the plot; all which were ſins in an high degree, and ground enough for an addreſs to remove, &c.

Now in this expedition, Bedloe, by deſign, having his lordſhip (as he might think) to himſelf, by often repairing to him, frequenting his table (as his brother was ſo braſen-faced to do) and pretending to make known horrid facts againſt the Queen, and the Duke; at which, as was preſumed, his lordſhip might ſtart, and wiſh him to have a care, and the like. And then, if a formal depoſition was taken, he might ſay that, in diſcourſe, he had diſcovered much more, but his lordſhip perſuaded him to ſuppreſs it, or any thing elſe, that, having had opportunities, he had been pleaſed to ſay or ſwear; and his brother and wife, and ſomebody elſe (perhaps) at hand to ſwear matters called circumſtantial evidence. And this is not ſuch a romance of pure invention, as may ſeem; for, after this bilk of a diſcovery was known, it was reported, and by many really expected or believed, that

Bedloe's wife was coming to town, and would teſtify that her huſband had diſcovered other matters, and more poſitive, but his lordſhip had ſuppreſſed them. But after ſhe was come up, ſhe had no diſcovery to make, but of her wants; and, after having got what ſhe could, ſhe vaniſhed. And thus his lordſhip reaped the fruit of his good fortune, and caution; for without the former, I queſtion whether all his ſtock of the latter, would ſo clearly have brought him off.

Called to the Houſe of Commons, and behaviour there.

His lordſhip was not long come to town, before he was ſummoned to attend the Houſe of Commons, to give an account of what diſcoveries, touching the plot, had been made to him at Briſtol. This gave him occaſion to ruminate all the whole proceeding, to find if any ſlip had been made (for he all along trod upon eggs) and he could find nothing poſſible to be cavilled upon, but (perhaps) a ſlip in his letter to the ſecretary in theſe words——"You may "imagine I was not curious to perplex him "with queſtions." As if he was wilfully wanting in ſearching out the truth by queſtions; but the anſwer was obvious, and no notice was taken of it. His lordſhip was not uſed to afford any umbrage of ill conſtruction againſt himſelf, but this came out on account of familiarity with the ſecretary, not dreaming of a public ſcrutiny; and, in ſuch a caſe, it might have proved

a great deal worſe: but now, for the Houſe of Commons, his lordſhip attended at the time, and, having a chair ſet for him by the table, after ſitting a while, he ſtood up and related the paſſage ſhortly; and, as to the circumſtances, there was his narrative of every particular. And then he gave in the original examination, (which, for this purpoſe, he had obtained from the ſecretary) and he laid down the very letter he wrote to the ſecretary (obtained as before) in which had been incloſed the copy ſent up from Briſtol. And having ſaid that this was all he knew, or could recollect concerning that matter, he was diſmiſſed. It is to be ſuppoſed that all this gear was ſufficiently canvaſſed, but nothing to be got out of it; ſo, after a conſiderable time, it was ordered to be printed, as before was mentioned, and he never heard more of the matter. I do not mention here the ſnare laid for the judges, by the Earl of Sunderland, when ſecretary, becauſe the ſame is particularly related in the Examen. And I lay aſide the voyaging part, at preſent, and return to his lordſhip's conduct of himſelf in the execution of his commiſſions of aſſize, &c. in the Weſtern circuit.

His cautious behaviour.

His lordſhip took care always to declare the laws to the country with all the exactneſs poſſible, and without making any diſtinctions of favour, of any party or denomination of men; and, according as the tenour of

our law books runs, he exhorted to loyalty, and to ſupport the royal prerogative by law; ſhewing that the ſafety of the national religion and property depended on the people's dutiful and legal obedience to the crown: and, for this purpoſe, he uſed ſome ſhort harangue at the entrance of his charges. When he firſt came the circuit, for two or three years, the factious gentlemen came to him, and, for aught that appeared at firſt to the contrary, for reſpect, as others did; but, in truth, it was to ſound, and practiſe experiments upon him; but more eſpecially if any factious cauſe was to be tried, as againſt a juſtice of peace for diſturbing conventicles, a mayor of a town, for ſome ſlip of authority exerted againſt the party, or, perhaps, where ſome party men were defendants, or the like, either to ſound his lordſhip's temper, or tempt his judgment by flatteries, or, at a diſtance, ſhews of terror, and the like; as his lordſhip ſoon found was manifeſtly their drift. He received them with all the civility that was decent, and diſcourſed with them amicably and freely upon indifferent matters; and, while they glanced at what he did not like, he gave them the hearing, and ſerved himſelf of their diſcourſe, to conjecture what was upon the anvil, and what they drove at. But, in his own talk, gave no umbrage for them to think him ductile, or to be wrought upon againſt his principle, or that

their diſcourſe made any impreſſion upon him; and wonderful careful he was not to give handles againſt himſelf; ſuch as, among that party, might be wreſted to calumny, as if he favoured popery, or arbitrary power: all which they earneſtly deſired ſhould be believed of him. And ſo amongſt the gentlemen of the loyal ſide, who, in moſt of the counties, were almoſt the whole body, he uſed no other terms in his private diſcourſe, than might have been pronounced upon the bench: for there is found in moſt men, either an itch, or elſe a vanity of talking, which diſpoſeth them to report what their ſuperiors ſay; and is, ſometimes, the cauſe of great miſconſtructions and inconveniences. For which reaſon, men, in authority, cannot be too ſolemn, and attached to a true ſenſe and principle in their ordinary converſation.

In factious cauſes.

And his lordſhip, when the factious cauſes came to be tried before him, and, by the muſter, he obſerved the tendency of the matter, and, ſometimes, thought it was brought forward to try him rather than the parties, managed with abſolute regard to the ſtricteſt forms of law, and juſtice of trials, gave full hearing, and allowed of no indecency, or diſorder, of counſel, took no notice of what ſome, upon the bench, would inſinuate (for the gentlemen were warm, and, on one ſide as well as the other, apt to meddle), but, before he had done, reduced

the fact to a ſtate of clearneſs; and ſo, after all impertinences pared off, the law was ſeldom doubtful; and, if it were, he gave ſuch reaſons, as juſtified his determinations: and ſo he ſailed among the rocks, gave full ſatisfaction to active gentlemen that the law was his rule, and the forms of it his direction. And the faction had no handle for any complaint that wrong was done, either in the matter or manner of his trials. Only ſome of them ſaid that *he never bit but in the right place*; and, to ſay the truth, of that he ſeldom failed. In this manner the faction proved him till, after two or three years experimenting, they deſpaired of making any impreſſion upon, or getting any advantage againſt him; and ſo they gave him over. For the chief of them, as for inſtance, Sir Francis Rolls in Hampſhire (but there is no need of names) and others, forbore the aſſizes, and came no more there while he came that circuit. I ſhould here account for the occaſion of that famous practice of ſurrenders and renewals of charters, and of *quo warranto*'s againſt ſome corporations; which, at firſt, moved from ſome gentlemen of Dorſetſhire and Devonſhire, provoked by the impudent and audacious behaviour of ſome corporations, and, through his lordſhip, came to his majeſty's ear. But all this is inſerted in the Examen; where the whole will appear.

In matters popular.

As to the ordinary buſineſs of the aſſizes (eſpecially on the crown ſide) he was never eaſy till, by examining over and over, and over again, aſking parties queſtions, as attornies, and every one that he thought could help to clear up an intricate fact; and ſcarce gave over till he had brought it to ſo clear a ſtate, as that the audience ſhould think as he declared. He had certain marks or notes, by means of which, however people ſhifted and prevaricated, he concluded what the truth was; and then the work was to make it plain to every body. Of this the caſe of Grant, touched before, was an inſtance; where, by the ſtart of a ſpeech, he concluded it true. He had alſo obſerved that men, inclined to paſſion, had more of truth than thoſe who were unconcerned. In trials of ſome criminals, whoſe caſes proved very obſcure, or doubtful; as to ſuch, eſpecially if they were capital, he was infinitely ſcrutinous; but never more puzzled than when a popular cry was at the heels of a buſineſs; for then he had his jury to deal with, and if he did not tread upon eggs, they would conclude ſiniſtrouſly, and be apt to find againſt his opinion. And, for this reaſon, he dreaded the trying of a witch. It is ſeldom that a poor old wretch is brought to trial upon that account, but there is, at the heels of her, a popular rage that does little leſs than demand her to be put to death: and, if a judge is ſo clear and open

as to declare againſt that impious vulgar opinion, that the devil himſelf has power to torment and kill innocent children, or that he is pleaſed to divert himſelf with the good people's cheeſe, butter, pigs, and geeſe, and the like errors of the ignorant and fooliſh rabble; the countrymen, (the triers) cry this judge hath no religion, for he doth not believe witches; and ſo, to ſhew they have ſome, hang the poor wretches. All which tendency to miſtake, requires a very prudent and moderate carriage in a judge, whereby to convince, rather by detecting of the fraud, than by denying authoritatively ſuch power to be given to old women.

Witches hanged at Exeter.

His lordſhip was ſomewhat more thoughtful upon this ſubject; becauſe that, in the year in which Mr. Juſtice Raymond was his co-judge in that circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rang with tales of their preternatural exploits, as the current of ſuch tattle uſeth to overflow. Nay, they went ſo far as to ſay that the judges horſes were at a ſtand, and could not draw the coach up the Caſtle lane: all which the common ſort firmly believed. It fell our that Raymond ſat on the crown ſide there; which freed his lornſhip of the care of ſuch trials. But he had really a concern upon him at what happened; which was that his brother Raymond's paſſive

behaviour ſhould let thoſe poor women die. The caſes were ſo far clear, viz. that the old women confeſſed, and owned in court, that they were witches. Theſe were two miſerable old creatures, that, one may ſay, as to ſenſe or underſtanding, were ſcarce alive; but were overwhelmed with melancholy, and waking dreams, and ſo ſtupid as no one could ſuppoſe they knew either the conſtruction or conſequence of what they ſaid. All the reſt of the evidence was trifling. I, ſitting in the court the next day, took up the file of informations, taken by the juſtices, which were laid out upon the table, and againſt one of the old women, read thus:—"This informant ſaith he "ſaw a cat leap in at her (the old woman's) "window, when it was twilight; and this "informant farther ſaith, that he verily be-"lieveth the ſaid cat to be the devil, and "more ſaith not." The judge made no nice diſtinctions, as how poſſible it was for old women in a ſort of melancholy madneſs, by often thinking in pain, and want of ſpirits, to contract an opinion of themſelves that was falſe; and that their confeſſion ought not to be taken againſt themſelves, without a plain evidence that it was rational and ſenſible, no more than that of a lunatic, or diſtracted perſon, but he left the point upon the evidence fairly (as they call it) to the jury, and they convicted

them both, as I remember; but one moſt certainly was hanged.

A witch acquitted at Saliſbury.

The firſt circuit his lordſhip went weſtward, Mr. Juſtice Rainsford, who had gone former circuits there, went with him; and he ſaid that, the year before, a witch was brought to Saliſbury, and tried before him. Sir James Long came to his chamber, and made a heavy complaint of this witch, and ſaid that if ſhe eſcaped, his eſtate would not be worth any thing; for all the people would go away. It happened that the witch was acquitted, and the knight continued extremely concerned; therefore the judge, to ſave the poor gentleman's eſtate, ordered the woman to be kept in gaol, and that the town ſhould allow her 2s. 6d. per week; for which he was very thankful. The very next aſſizes, he came to the judge to deſire his lordſhip would let her come back to the town. And why? They could keep her for 1s. 6d. there; and in the gaol, ſhe coſt them a ſhilling more.

An old man tried for a wizzard.

His lordſhip had not the good fortune of eſcaping all buſineſs of that kind; for at Taunton-Dean he was forced to try an old man for a wizzard; and, for the curioſity of obſerving the ſtate of a male witch or wizzard, I attended in the court, and ſat near where the poor man ſtood. The evidence againſt him was, the having bewitched a girl of about thirteen years old: for ſhe had ſtrange and unaccountable fits,

and uſed to cry out upon him, and ſpit out of her mouth ſtreight pins; and, whenever the man was brought near her, ſhe fell in her fits, and ſpit forth ſtreight pins. His lordſhip wondered at the ſtreight pins, which could not be ſo well couched in the mouth as crooked ones; for ſuch only uſed to be ſpit out by people bewitched. He examined the witneſſes very tenderly and carefully, and ſo as none could collect what his opinion was; for he was fearful of the jurymens precipitancy, if he gave them any offence. When the poor man was told he muſt anſwer for himſelf, he entered upon a defence as orderly and well expreſſed as I ever heard ſpoke by any man, counſel, or other; and if the attorney-general had been his advocate, I am ſure he would not have done it more ſenſibly. The ſum of it was malice, threatening, and circumſtances of impoſture in the girl; to which matters he called his witneſſes, and they were heard. After this was done, the judge was not ſatisfied to direct the jury before the impoſture was fully declared, but ſtudied, and beat the buſh awhile, aſking ſometimes one and then another, queſtions as he thought proper. At length he turned to the juſtice of peace that committed the man, and took the firſt examinations, and *Sir*, ſaid he, *pray will you ingenuouſly declare your thoughts, if you have any, touching theſe ſtreight pins which the girl ſpit; for you ſaw her in her*

fit? Then, *my lord*, ſaid he, *I did not know that I might concern myſelf in this evidence, having taken the examination, and committed the man. But, ſince your lordſhip demands it, I muſt needs ſay I think the girl doubling herſelf in her fit, as being convulſed, bent, her head down cloſe to her ſtomacher, and, with her mouth, took pins out of the edge of that, and then, righting herſelf a little, ſpit them into ſome by-ſtanders hands.* This caſt an univerſal ſatisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down ſtairs, out of the court, an hideous old woman cried, *God bleſs your lordſhip. What's the matter, good woman?* ſaid the judge. *My lord*, ſaid ſhe, *forty years ago, they would have hanged me for a witch, and they could not; and, now, they would have hanged my poor ſon.*

The princely œconomy of the Duke of Beaufort.

One year his lordſhip, concluding at Briſtol, made a viſit at Badminton to the Duke of Beaufort, and ſtaid about a week. For the Duke was deſcended from a North of his lordſhip's family, viz. one of the Lord Edward North's daughters, whom a lineal anceſtor of his grace married. So beſides conformity of principle, with reſpect to the public, they were, by this relation, qualified for mutual reſpect and honour. I mention this entertainment as an handle of ſhewing a princely way of living, which that noble duke uſed, above any other, except crowned heads, that I have had notice

of in Europe; and, in ſome reſpects, greater than moſt of them, to whom he might have been an example, he had above 2,000l. per annum in his hands, which he managed by ſtewards, bailiffs, and ſervants; and, of that, a great part of the country, which was his own, lying round about him, was part, and the huſbandmen, &c. were of his family, and provided for in his large expanded houſe. He bred all his horſes, which came to the huſbandry firſt colts, and, from thence, as they were fit, were taken into his equipage: and, as by age, or accident, they grew unfit for that ſervice, they were returned to the place from whence they came, and there expired; except what, for plenty, or unfitneſs, were ſold or diſpoſed of. He had about two hundred perſons in his family, all provided for; and in his capital houſe, nine original tables covered every day: and, for the accommodation of ſo many, a large hall was built, with a ſort of alcove, at one end, for diſtinction; but yet the whole lay in the view of him that was chief, who had power to do what was proper for keeping order amongſt them; and it was his charge to ſee it done. The tables were properly aſſigned; as, for example, the chief ſteward with the gentlemen and pages: the maſter of the horſe with the coachmen and liveries; an under ſteward with the bailiffs and ſome huſbandmen; the clerk of the

kitchen with the bakers, brewers, &c. all together; and other more inferior people, under theſe, in places apart. The women had their dining room alſo, and were diſtributed in like manner. My lady's chief woman with the gentlewomen; the houſekeeper with the maids, and ſome others. The method of governing this great family was admirable and eaſy, and ſuch as might have been a pattern for any management whatever. For if the Duke or Ducheſs (who concerned herſelf much more than he did; for every day of her life, in the morning, ſhe took her tour, and viſited every office about the houſe, and ſo was her own ſuperintendent) obſerved any thing amiſs or ſuſpicious, as a ſervant riding out, or the like, nothing was ſaid to that ſervant; but his immediate ſuperior, or one of an higher order, was ſent for, who was to enquire and anſwer if leave had been given or not; if not, ſuch ſervant was ſtreight turned away. No fault of order was paſſed by; for it may be concluded there are enough of them that paſs undiſcovered. All the proviſions of the family came from foreign parts, as merchandiſe. Soap and candle were made in the houſe, ſo likewiſe the malt was ground there; and all the drink, that came to the duke's table, was of malt ſun-dried upon the leads of his houſe. Thoſe are large, and the lanthorn is in the centre of an aſteriſk of glades, cut through the wood of all

the country round, four or five in a quarter, almoſt *apert de vieu*. Diverſe of the gentlemen cut their trees and hedges to humour his viſtos; and ſome planted their hills in his lines, for compliment, at their own charge. All the trees, planted in his parks, and about, were fenced with a dry wall of ſtone, taken out where the tree was ſet. And with all this menagery and proviſion, no one, that comes and goes for viſits, or affairs with the Duke (who was Lord Lieutenant of four or five counties, and Lord Preſident of Wales) that could obſerve any thing more to do there, than in any other nobleman's houſe. So little, of vain oſtentation, was to be ſeen there. At the entrance, where coaches ordinarily came in, the Duke built a neat dwelling houſe, but pompous ſtables, which would accommodate forty horſes, as well as the beſt ſtables he had. This was called the inn, and was contrived for the eaſe of the ſuitors, as I may call them; for, inſtead of half a crown to his ſervants at taking horſe, ſixpence there, for form, ſerved the turn; and no ſervant of his came near a gentleman's horſe; but they were brought by their own ſervants, except ſuch as lodged, whoſe equipages were in his own ſtables.

More of the fame.

As for the Duke and Ducheſs, and their friends, there was no time of the day without diverſion. Breakfaſt in her gallery that opened into the gardens; then, perhaps a

deer was to be killed, or the gardens and parks with the ſeveral ſorts of deer, to be viſited; and if it required mounting, horſes of the Duke's were brought for all the company. And ſo, in the afternoon, when the ladies were diſpoſed to air, and the gentlemen with them, coaches and ſix came to hold them all. At half an hour after eleven the bell rang to prayers, ſo at ſix in the evening; and, through a gallery, the beſt company went into an iſle in the church (ſo near was it) and the Duke and Ducheſs could ſee if all the family were there. The ordinary paſtime of the ladies was in a gallery on the other ſide, where ſhe had diverſe gentlewomen commonly at work upon embroidery and fringe-making; for all the beds of ſtate were made and finiſhed in the houſe. The meats were very neat, and not groſs; no ſervants in livery attended but thoſe called gentlemen only; and, in the ſeveral kinds, even down to the ſmall beer, nothing could be more choice than the table was. It was an oblong and not an oval; and the Ducheſs, with two daughters only, ſat at the upper end. If the gentlemen choſe a glaſs of wine, the civil offers were made either to go down into the vaults, which were very large and ſumptuous, or ſervants, at a ſign given, attended with ſalvers, &c. and many a briſk round went about; but no ſitting at a table with tobacco and healths, as the too common uſe

is. And this way of entertaining continued a week, while we were there, with incomparable variety: for the Duke had always ſome new project of building, walling, or planting, which he would ſhew, and aſk his friends their advice about; and nothing was forced, or ſtrained, but eaſy and familiar, as if it was, and really ſo I thought it to be, the common courſe and way of living in that family.

Structure and education.

One thing more I muſt needs relate, which the Duke told us ſmiling; and it was this. When he was in the midſt of his building, his neighbour, the Lord Chief Juſtice Hales, made him a viſit; and obſerving the many contrivances the Duke had for the diſpoſing of ſo great a family, he craved leave to ſuggeſt one to him, which he thought would be much for his ſervice; and it was *to have but one door to his houſe, and the window of his ſtudy, where he ſat moſt, open upon that.* This ſhews how hard it is for even wiſe and learned men to conſider things without themſelves. The children of the family were bred with a philoſophical care. No inferior ſervants were permitted to entertain them, leſt ſome mean ſentiments, or fooliſh notions and fables, ſhould ſteal into them; and nothing was ſo ſtrongly impreſſed upon them, as a ſenſe of honour. Witneſs the Lord Arthur, who, being about five years old, was very angry with the judge for hanging men. The judge told

him that if they were not hanged they would kill and ſteal. *No*, ſaid the little boy, *you ſhould make them promiſe upon their honour, they will not do ſo, and then they will not.* It were well if this inſtitutionary care of parents were always correſpondent in the manners of all the children; for it is not often found to prove ſo.

Entertainment in the North.

But now to return to his lordſhip, and his circuiteering. He took an opportunity one ſummer, to turn by the north, which begins at York, and concludes at Lancaſter; but, in winter, it is uſual to omit the counties of Durham, Northumberland, Cumberland, and Weſtmoreland. His lordſhip was curious to viſit the coal mines in Lumly park, which are the greateſt in the north, and produce the beſt coal, and, being exported at Sunderland, are diſtinguiſhed as of that place. Theſe collieries had but one drain of water drawn by two engines, one of three ſtories, the other of two. All the pits, for two or three miles together, were drained into thoſe drains. The engines are placed in the loweſt places, that there may be the leſs way for the water to riſe; and if there be a running ſtream to work the engines, it is happy. Coal lies under the ſtone; and they are twelve months in ſinking a pit. Damps, or foul air, kill inſenſibly; ſinking another pit, that the air may not ſtagnate, is an infallible remedy. They are moſt in very hot weather. An

infallible trial is by a dog; and the candles ſhew it. They ſeem to be heavy ſulphurous air not fit for breath; and I have heard ſome ſay that they would ſometimes lie in the midſt of a ſhaft, and the bottom be clear. The flame of a candle will not kindle them ſo ſoon as the ſnuff; but they have been kindled by the ſtriking fire with a tool. The blaſt is mighty violent; but men have been ſaved by lying flat on their bellies. When they are by the ſide of an hill, they drain by a level carried a mile under ground, and cut through rock to the value of 5 or 6000*l.* and where there is no rock it is ſupported with timber.

Belvoir caſtle, York, and Durham.

In the way towards the north his lordſhip viſited the Lord Rutland at Belvoir caſtle, where the proſpect is much as that is from Windſor; but hath this advantage, that the ſubjacent country is moſt of it chace ground; and that is ſo detrimental that the people offered 1500*l.* per annum, rent charge of inheritance, to be releaſed; but that is kept againſt an exigence in the family (if any ſhould happen) and ſo to preſerve a better eſtate. There was little of curioſity to be obſerved in the city of York, beſides the metropolitan church, which is a ſtately one indeed, only diſgraced by a wooden roof framed archwiſe, but manifeſtly ſeen. The gentry affect much to walk there to ſee and be ſeen; and the like cuſtom is uſed at Durham.

In theſe churches, wind muſick was uſed in the choir; which I apprehend might be introduced at firſt for want of voices, if not of organs; but, as I hear, they are now diſuſed. To ſay the truth, nothing comes ſo near, or rather imitates ſo much, an excellent voice, as a cornet pipe; but the labour of the lips is too great, and it is ſeldom well ſounded. His lordſhip was well enough known in all the choirs whereever he came; and the boys failed not to bring him a fair book of the anthem and ſervice, and ſometimes the ſcore if they had it, expecting, as they always had, a compenſation for their pains. At Durham, the biſhop entertained, who is a ſort of ſovereign, or count palatine, there, but much ſhrunk below the ancient authority and dignity. All proceſs of law is original, without dependance on London. The cathedral church ſhews the moſt of gothick antiquity of any in England; and the marks of old ruin are to be ſeen by the different orders of the ſupports: thoſe, which are very large and round, with ſemicircular arches, are the moſt antique. The biſhop carried his lordſhip to his ancient ſeat called Aukland, which is to Durham as Croydon to Lambeth; and the entertainment was in all points, while his lordſhip ſtaid in that palatinate, as I may term it, truly great and generous. And thence the road lay to Newcaſtle over a very delightful plain,

having Lumly caſtle in view, on the left hand, moſt part of the way.

Entertainmentat Newcaſtle.

His lordſhip's entertainment at Newcaſtle, was very agreeable, becauſe it went moſt upon the trades of the place, as coalmines, ſaltworks, and the like, with the wonders that belonged to them; and the magiſtrates were ſolicitous to give him all the diverſion they could: and one was the going down to Tinmouth caſtle in the town barge. The equipment of the veſſel was very ſtately; for, a-head, there ſat a four or five drone bagpipe, the north country organ, and a trumpeter a-ſtern; and ſo we rowed merriiy along. The making ſalt I thought the beſt ſight we had there. The other entertainment was a ſupper in the open air upon an iſland in the Tyne, ſomewhat above the town; and all by the way of ligg and ſit upon the ground; but proviſions for a camp, and wine, of all ſorts, very fine. In ſhort, all circumſtances taken together, the cool of the evening, the verdant flat of the iſland with wood diſperſed upon it, and water curling about us, view of the hills on both ſides of the river, the good appetites, beſt proviſions, and a world of merry ſtories of the Scots (which by the way makes a great part of the wit in thoſe parts) made the place very agreeable, where every one walked after his fancy, and all were pleaſed.

Some of the aldermen related ſtrange hiſtories of their coal works: and one was by Sir William Blacket who cut into an hill in order to drain the water, and conquered all difficulties of ſtone, and the like, 'till he came to clay, and that was too hard for him; for no means of timber, or walls, would reſiſt, but all was crouded together; and this was by the weight of the hill bearing upon a clay that yielded. In this work he loſt 20,000*l.* Another thing, that is remarkable, is their wayleaves; for, when men have pieces of ground between the colliery and the river, they ſell leave to lead coals over their ground; and ſo dear that the owner of a rood of ground will expect 20*l.* per annum for this leave. The manner of the carriage is by laying rails of timber, from the colliery, down to the river, exactly ſtreight and parallel; and bulky carts are made with four rowlets fitting theſe rails; whereby the carriage is ſo eaſy that one horſe will draw down four or five chaldron of coals, and is an immenſe benefit to the coal merchants. Another advantage of the coaſters upon the river, was ſhewed his lordſhip. And that was what they call ballaſt wharfs. Any land owner may make that which they call a key, next to the river, and ſell leave to ſhips to throw out their ballaſt there, which the town will not permit to be toſſed into the river; and the loading of coals is ballaſt enough to return with

Of a drain to a coal mine, and way-leaves.

home towards London. So it ſeems that the ſhifting of the ballaſt, out and home, is no ſmall incumbrance to the coal trade.

The ſmall port of Seaton Delaval.

From Tinmouth his lordſhip, by invitation, went to dine at Seaton Delaval. Sir Ralph Delaval entertained us exceeding well; and not ſo much with eating and drinking, which appertains properly to the brute, and not to the man, but with very ingenious diſcourſe, and ſhewing to us many curioſities, of which he himſelf was author, in that place. The chief remarkable, there, was a little port which that gentleman, with great contrivance, and after many diſappointments, made for ſecuring ſmall craft that carried out his ſalt and coal; and he had been encouraged in it by King Charles the ſecond, who made him collector and ſurveyor of his own port, and no officer to intermeddle there. It ſtands at the mouth of a rill (as it is called) of water, which, running from the hills, had excavated a great hollow, in the fall, as it run. The ground, at the ſea, is an hard impenetrable flat rock; and, for cover of the veſſels, which, elſe in the rage, muſt be daſhed to pieces, Sir Ralph had built, or, rather, often rebuilt a pier of ſtone that fended off the ſurge to the north-eaſt, and, at high water, gave entrance near a little promontory of the ſhoar, turning in by the north; and, at low water, the veſſels lay dry upon the rock. This had been built of ſquare ſtone, with, and without, ce-

ment; but all was heaved away with the ſurge; and, for a great while, nothing could be found ſtrong enough to hold againſt the lifting and ſucking of the water. At length, Sir Ralph, at an immenſe coſt, bound every joint of the ſtone, not only laterally, but, upright, with dovetails of heart of oak let into the ſtone; and that held effectually: for, if the ſtones were lifted up, they fell in their places again. This little harbour was apt to ſilt up with the ſea ſand; for remedying of which, he uſed the back water of his rill, and that kept the channel always open: and, for that end, he had an eaſy and ſure device; which was ſluice-gates built croſs the channel of the rill, which, during tide of flood, were ſhut, and ſo the water gathered to a great head above, till low water; and then the ſluices opened, let the gathered water come down all at once, which ſcoured away the ſand that, every tide, lodged upon the rock, and waſhed it as clean as a marble table. All this we ſaw, with his ſalt-pans at work about it, and the petit magazines, of a marine trade, upon the wharf: and ſo he reaped the fruits of his great coſt and invention; and, if, in the whole, the profit did not anſwer the account, the pleaſure of deſigning and executing, which is the moſt exquiſite of any, did it.

I muſt not omit one paſſage, which ſhewed the ſteady conſtancy of that gentleman's mind; which was that, at the beginning of

A colliery drowned.

dinner, a ſervant brought him a letter, wherein was an account of a bag of water which was broke in his greateſt colliery. Upon which, folding up the letter, ſaid he, *My lord, here I have advice ſent me of a loſs, in a colliery, which I cannot eſtimate at leſs than* 7000l. *and now you ſhall ſee if I alter my countenance or behaviour, from what you have ſeen of me already.* And ſo fell to diſcourſing of theſe bags of water, and the methods to clear them, as if the caſe had been another's, and not his own. He ſaid his only apprehenſion was that the water might come from the ſea; and *then*, ſaid he, *the whole colliery is utterly loſt: elſe, with charge, it will be recovered.* Whereupon he ſent for a bottle of the water, and, finding it not ſaline, as from the ſea, was well ſatisfied. Afterwards we enquired if the water was conquered, and we were told it proved not ſo bad as he expected. For it ſeems that although 1700*l.* was ſpent upon engines, and they could not ſink it an inch, yet 600*l.* more emptied it; ſo that it had no more than the ordinary ſprings; and, in about ſix weeks, he raiſed coal again. He ſaid that chain pumps were the beſt engines, for they draw conſtant and even; but they can have but two ſtories of them, the ſecond being with an axle-tree of ſeven or eight fathom; and the deepeſt ſtory is wrought by buckets, and a wheel and ropes, with the force at the top.

The county of Northumberland hath been exceedingly infeſted with thieving of cattle, which is the remains of the border trade, ſince the union with Scotland, after the way uſed, in time of peace, before. For as, in Italy, the murderer, running into the next territory, was ſafe: ſo here they ſtole on either ſide, and the other, under a different juriſdiction, was an aſylum. This was ſo great a miſchief that all the conſiderable farm houſes (the houſes of gentlemen were caſtles of courſe) were built of ſtone in the manner of a ſquare tower, with an overhanging battlement, and, underneath, the cattle were lodged every night. In the upper room the family lodged, and, when the alarm came, they went up to the top, and, with hot water and ſtones from the battlement, fought in defence of their cattle. The advantage of the union was ſo great to theſe countries, that the Lord Grey of Wark's eſtate, which, before, was not above 1000*l.* per annum, hath ſince riſen to 7 or 8000*l.* which is, at leaſt, a ſixfold improvement. After the union, to prevent this thieving trade, the crown ſent commiſſioners of oyer and terminer, directed to an equal number of Engliſh and Scotch, extending to certain limits on each ſide of the border; and, being continued, it is therefore called the border commiſſion. And theſe meet in their ſeſſions, and hang up at another rate than the aſſizes; for we were told that, at

The border commiſſion.

one ſeſſions, they hanged eighteen for not reading *ſicut clerici.*

Of the country keeping, and Bedlamers.

This hath made a conſiderable reform; but yet there is need of an officer they call a country keeper, who hath a ſalary from the country, and is bound to make good all the ſtolen cattle, unleſs found out and reſtored. When his lordſhip was there, one Mr. Widdrington was keeper, with 500*l.* per annum ſalary. The country is yet very ſharp upon thieves; and a violent ſuſpicion, there, is next to conviction. When his lordſhip held the aſſizes at Newcaſtle, there was one Mungo Noble (ſuppoſed to be a great thief) brought to trial before his lordſhip, upon four ſeveral indictments; and his lordſhip was ſo much a ſouth country judge, as not to think any of them well proved. One was for ſtealing an horſe of a perſon unknown: and the evidence amounted to no more than that a horſe was ſeen feeding upon the heath near his ſhiel (which is a cottage made in open places of turf and flag) and none could tell who was the owner of it. In ſhort, the man eſcaped, much to the regret of diverſe gentlemen, who thought he deſerved to be hanged; and that was enough. While the judge, at the trial, diſcourſed of the evidence and its defects, a Scotch gentleman upon the bench, who was a border commiſſioner, made a long neck towards the judge, and *My Laird,* ſaid he, *ſend him to Huzz, and yees neer ſee*

him mere. This country was then much troubled with Bedlamers. One was tried before his lordſhip, for killing another of his own trade, whom he ſurpriſed aſleep, and, with his great ſtaff, knocked on the head; and then bragged that he had given him *a ſark full of ſere benes;* that is, a ſhirt full of ſore bones. He would not plead to the country, becauſe there were Horſecopers amongſt them, till the preſs was ready; and then he pleaded, and was, at laſt, hanged. They were a great nuſance in the country, frighting the people in their houſes, and taking what they liſted: ſo that a ſmall matter, with the countrymen, would do ſuch a fellow's buſineſs.

From Newcaſtle, his lordſhip's rout lay to Carliſle. The Northumberland ſheriff gave us all arms; that is, a dagger, knife, penknife, and fork, all together. And becauſe the hideous road along by the Tyne, for the many and ſharp turnings, and perpetual precipices, was for a coach, not ſuſtained by main force, impaſſable, his lordſhip was forced to take horſe, and to ride moſt part of the way to Hexham. We were ſhewed where coal mines burnt under ground; but could diſcern nothing of it, beſides the deadneſs of all plants there. We were ſhewed the Picts wall; but it appeared only as a range, or bank of ſtones all overgrown with graſs, not unlike the bank of the Devil's ditch at Newmarket, only without any hol-

Officiouſneſs of the borderers.

low, and nothing near ſo big. Here his lordſhip ſaw the true image of a border country. The tenants of the ſeveral manors are bound to guard the judges through their precinct; and out of it they would not go, no, not an inch to ſave the ſouls of them. They were a comical ſort of people, riding upon negs, as they call their ſmall horſes, with long beards, cloaks, and long, broad ſwords, with baſket hilts, hanging in broad belts, that their legs and ſwords almoſt touched the ground; and every one, in his turn, with his ſhort cloak, and other equipage, came up cheek by joul, and talked with my lord judge. His lordſhip was very well pleaſed with their diſcourſe; for they were great antiquarians in their own bounds.

Of Hexham and Carliſle; and tenants right in Cumberland.

We came, at length, to Hexham, formerly a metropolis of a famous ſhire of that name. From the entertainment and lodging, there, it might be miſtaken; but whether for a Scotch, or for a Welſh town, may be a nice point for the experienced to determine. The reſt of the country to Carliſle was more pleaſant and direct; and, bating hunger and thirſt, which will not be quenched by any thing to be faſtened upon there, but what the bounty of the ſkies affords, was paſſed over with content. At Carliſle, nothing extraordinary occurred, but good ale and ſmall beer, which was ſupplied to their lordſhips from the pre-

bends houſes; and they boaſted of brewing it at home: but, being aſked with what malt? they made anſwer, that it was ſouth country malt. For, to ſay truth, the big, (viz. a four-rowed barley) is ſeldom ripe; and the oats, which they call yeats, are commonly firſt covered with ſnow. In Cumberland, the people had joined in a ſort of confederacy to undermine the eſtates of the gentry, by pretending a tenant right; which, there, is a cuſtomary eſtate, not unlike our copyholds: and the verdict was ſure for the tenants right, whatever the caſe was. The gentlemen, finding that all was going, reſolved to put a ſtop to it by ſerving on common juries. I could not but wonder to ſee pantaloons and ſhoulder knots crouding among the common clowns; but this account was a ſatisfaction.

Weſtmoreland, Appleby, Counteſs of Pembroke.

From hence we went, through a plain, but ſtony, road, in the view of hideous mountains, called Foulneſs hills, to Appleby in Weſtmoreland. There is little of a ſhire town to be found there, being but, as it were, a village; only there is the caſtle, an ancient fortified ſeat of the Earl of Thanets. Not long before the judge came there, the Counteſs of Pembroke made it her ordinary habitation; but ſhe was then dead. She was a magnificent and learned lady, and had named diverſe of the towers of her caſtle; one was Pendragon's tower, another Julius Cæſar's tower. The Earl of Thanet

is the hereditary ſheriff of that county; the only one, of that quality, in England, and had ordered a ſumptuous entertainment to be given by one Mr. Gambetes, his ſteward, to the judges. His lordſhip was very much pleaſed with the inſcriptions the Counteſs had made in diverſe places about the caſtle, and under old pictures, containing much of hiſtory, and pedigree of the family. And it was ſaid that Hales, afterwards chief juſtice, aſſiſted her in the peruſal and methodiſing of her evidences and muniments, and made her fair extracts of them. I muſt mention one thing more, for the honour of this incomparable lady; and that was her generoſity. It was affirmed, by thoſe that knew it to be true, that no perſon ever made her a viſit, that went away without a preſent ingeniouſly contrived, according to the quality of the perſon. And we were ſorry we could not be witneſſes of that piece of grandeur.

A great feud in Cumberland reconciled.

There was a high feud, that had been carried on in this country with a world of heat, between the Muſgraves and their friends on the one ſide, and the Lowthers, Fletchers, and diverſe other gentlemen on the other. And if one may borrow a diſtinction of much later date, I may ſay the former were Tory, and the other Whig. It is certain that the Muſgraves were envied by their neighbours; for they were courtiers, and having been cavaliers, and alſo very ſerviceable in

parliament (it ſeems that ſome ſo early knew how to value their ſervices there), were favoured, having the government of Carliſle, a ſort of frontier, and alſo were farmers at eaſy rates, of a duty upon cattle out of Scotland; which duty, ſome ſaid, as they had ordered the matter, was gained from the parliament on purpoſe to be granted to them whoſe project it was. The difference formed itſelf upon the diviſion of the country (if I may borrow the words) into Ciſalpine and Tranſalpine regions; and the queſtion was in which, of theſe, the general ſeſſions ſhould be held; each ſide holding ſtiffly to his own convenience: and, ſometimes, they had the general quarter ſeſſions at both places, which was very abſurd. And this diſpute had its purlieus fraught with general and original ſlanders, raiſed on either ſide againſt the other; which run ſo high that the whole country run into the faction: good people were ſcandaliſed, and the king himſelf importuned and troubled about it. And his majeſty was pleaſed to recommend the matter to his lordſhip to compoſe in his circuit, if he could. At his arrival at Appleby, he appointed the gentlemen to attend him; which they did. The Muſgraves ſpoke for themſelves; the other ſide had a counſel, but left little to him; but Sir John Lowther, ſince Lord Lonſdale, managed moſt on that ſide. His lordſhip gave neither a victory

over the other (which, in the north, is much deſired) but propoſed an expedient which was, then, new, though, of later years, much in uſe in diverſe counties. And it is expreſſed in a memorandum his lordſhip took in an almanack, viz. "There being "a controverſy concerning holding the "quarter ſeſſions at two places in Weſt-"moreland, Mr. Baron Berty and myſelf, "upon conference with all the juſtices, de-"livered our opinions that there could be "but one general quarter ſeſſions, in one "county, for one quarter; and that, if "conveniency required attendance at other "places, it muſt be by way of adjourn-"ment: and we propoſed that way; to "which they readily agreed. And we ad-"viſed that, at the cloſe of every ſeſſions, "order ſhould go for ſummoning the next, "which ſhould be done by writ under the "ſeal of the court; and we directed the "form of a precept, 1676." And thus this mighty difference was compoſed, and all the buſineſs of the ſeſſions hath proceeded accordingly ever ſince.

Morton Pike, Lancaſter, Kendal, trade, county palatine caſtle.

His lordſhip had a ſingular pleaſure in viewing, from Appleby caſtle, the vaſt mountains that ſurround it; and particularly one called Morton Pike, which roſe in the low country, in the ſhape of an heap of corn rounded up, and ſeemed as green and ſmooth as a bowling green: one would be almoſt ready to leap from the caſtle

upon it; ſo near it ſeemed, but was, in truth half a day's journey off. His lordſhip's next remove was to Lancaſter; but he lodged at Kendal by the way. That is a ſcattered town in an incloſed country, very ſtony and dirty; and we could not, without a chagrin, obſerve the common people walk barefoot, and the children leaping as if they had hoofs, and thoſe ſhod with iron; but it is almoſt the ſame all over the north; This town, ſo ſituated, and out of the way, is yet celebrated for much woollen manufacture ſent from thence to moſt parts of England. They could write to moſt trading towns, and have anſwers by the packs (for all is horſe carriage) with returns (time being allowed) as certain as by the poſt. From hence to Lancaſter is a very rugged journey, and, upon the tops of ſome hills, one would not give a groat for all the land he could ſee; it being nothing but hard and impenetrable rock, white as ſnow; but, in the vallies, there was fertility enough. Nothing happened to his lordſhip at Lancaſter, worth noting. This county (as that of Durham) is palatine, but more auguſt and regular, and, all the proceedings, commencing and ending there, afforded more law buſineſs than other counties, that deal only by *niſi prius*; which made his ſtay longer. The chief curioſity of the place is the magnificent old caſtle, where the great John of Gaunt kept

his court; and, now in the great hall, the aſſiſe courts are placed. There is enough left to ſhew that, in ſuch old times, their ſtructures, and their minds alſo, were as great and magnifick, as moſt ages ſince have had reaſon to boaſt of.

Candle coal, burning well, magnet.

In the return homewards from Lancaſter, his lordſhip took all the advantage he could of ſeeing great towns and places of note. He ſtaid ſome days with Sir Roger Bradſhaw, whoſe lordſhip is famous for yielding the Canal (or Candle) coal. It is ſo termed, as I gueſs, becauſe the manufacturers in that country, uſe no candle, but work by the light of their coal fire. The property of it is to burn and flame, till it is all conſumed, without leaving any cinder. It is lighted by a candle like amber, and the grate ſtands not againſt the back of a large chimney, as common coal grates; but in the middle, where ballads are paſted round, and the folk ſit about it, working or merry-making. His lordſhip ſaw the pits, wherevaſt piles of that coal were raiſed; and it is pity the place wants water carriage; elſe, London would be, in the better part, ſerved with it. But the greateſt wonder, his lordſhip ſaw, was that which they call the burning well. The manner of it is this. Firſt, in ſome place, where they know the ſulphurous vapour perſpires (often in a ditch) they dig up a turf, and clap it down in its place again; and then they are ready for projec-

tion. When the ſhew company are come, a man takes up the turf and, after a little puffing of a brown paper match, gives fire, and inſtantly the hole is filled with a blue ſpirituous flame like brandy. It ſeemed to waſte, and I believe would not have burnt in that manner long; but, while it was burning, they put water in the hole, and the flame continued upon the water as if it had been ſpirits. And ſome people ſaid they uſed to boil eggs there. That, which ſeemed moſt ſtrange, was that the vapour ſhould come through the water, and burn, and no bubbling of the water appear. It ſeems to infer that the vapour permeates the body of the water, as water through ſands. But I queſtion, if the body were not fluid, but rigid, as glaſs, whether the vapour would ſo eaſily paſs it: for the perpetual action of the fluid parts, facilitates the paſſage. And it is ſome demonſtration how eaſily the effluvia of a magnet may permeate glaſs, metals, and every palpable ſubſtance we are acquainted with, as we continually obſerve of them.

Litchfield cathedral, how rebuilt, of the ſervice there.

His lordſhip pitched next at the city of Litchfield; and, as his uſe was, took the advantage of ſpending his Sunday there. I touched before how much affected his lordſhip was with the ſolemn church ſervice in the cathedrals, which is not to be wondered at, conſidering how he was, in general, devoted to muſick; and he could

not be inſenſible, where ſo good uſe was made of it. For the ſervice was performed in that church, with more harmony, and leſs huddle, than I have known it in any church in England, except, of late, in St. Paul's. This cathedral church was beaten to pieces in the late wars; but, by the zeal and diligence of Biſhop Hacket, was rebuilt as entirely as if it had never been injured; and chiefly with the money he raiſed by bareſaced begging. No gentleman lodged, or ſcarce baited in the city, to whom he did not pay his reſpects by way of viſit, which ended in plauſible entreaties for ſome aſſiſtance towards reſcuing his diſtreſſed church from ruin. And that he brought about ſo effectually, and adorned his choir ſo completely and politely, as I have not ſeen a more laudable and well compoſed ſtructure for the purpoſe, in the country, any where. He did not live to finiſh the palace; nor did his ſucceſſor Woods, though rich, willingly do any thing to it. Sir Simon Degg, a gentleman of that country, to incite him to undertake it, dedicated to him a book entitled, the Parſon's Counſellor; and there, in the preface, compliments him upon the ſubject of having moſt nobly reſtored, to the church, that demoliſhed fabrick, for the good of his ſucceſſors; although, at that time, he had not ſo much as turned over one ſingle ſtone towards it. But I think the good Archbiſhop Sancroft, by his authority,

forced him, at laſt, to do ſomething, though full againſt his will. So vaſt is the difference in the moral characters of men under the ſame call and obligation.

Fanatic news letters.

It was in this circuit that, as his lordſhip paſſed along, diverſe gentlemen ſhewed him circular news letters that came to them; and he perceived that the ſcope of theſe was to miſrepreſent and miſconſtrue all the public tranſactions of ſtate, and might have been properly ſtiled fanatic news letters, contrived and diſpatched to diverſe places to ſtir up ſedition. And, upon his lordſhip's enquiry, he was told that they came from Mr. Coleman, then, the Duke of York's ſecretary. His lordſhip, at his return, made a repreſentation to the king of this news letter from ſuch a perſon, and the ill conſequences of it. Whereupon Mr. Coleman was turned out of the Duke's ſervice; but never much blamed; for he was afterwards made the Ducheſs of York's ſecretary. Which ſhews two things; 1. That notwithſtanding all the fanatic noiſe, at that time, againſt popery, the papiſts and fanatics joined in proceedings to weaken and deſtroy the eſtabliſhed government. 2. That what Coleman did, was by direction, founded upon the policy of the Roman Catholic party, at that time.

Middleton tower, Norfolk.

His lordſhip went but once as judge in his own country, that is the Norfolk circuit. But there, beſides the univerſal ho-

nour and reſpect he had in thoſe parts, where had been the ſcene of his firſt and riſing practice, I know little to note more than what, in ſuch caſes, is obvious to every one's imagination. There is a piece of antiquity in Middleton, near Lynn, which, though it ſtands in ſight of that great town, is not taken notice of by any of the topographers. It is called Middleton tower; but it is only a great gatehouſe, ſomewhat like that old one (if it be ſtanding) at Hampton court. There are two large turrets; and a broad flat between, through which, the entrance is through a lofty arch; the firſt floor was a vault, and a very large room above. There appear the footſteps of a very large palace, being a ſquare court built round to it, all within a moat. It formerly belonged to the Lord Scales, and, ſtands, now, in a valley ſo low, that the ground, about it, is little better than moor. By which we ſee the alterations of places, that time hath made; for without doubt, anciently, the valley was good land, and watered only with a little rivulet that runs in the middle of it, and not ſo filted up as it is now; and, for unwholeſomeneſs, become almoſt uninhabitable.

Oxford parliament.

But now, to ſtep a little back, his lordſhip, coming out of his Weſtern circuits, had two adventures. The one was meeting the king and parliament at Oxford. His time would not let him arrive at the open-

ing of it, but two or three days after; ſo that the place was, to him as a theatre; and he might have aſked what play was to be acted? He knew no more of the intrigues on foot than any ſtranger did, much leſs dreamt of a poſitive armament againſt the king, as manifeſtly ſhewed itſelf there; which diſpoſed the king to take advantage of the difference between the two houſes, upon the matter of Fitzharris; and, after five days ſitting, to diſſolve them. This ſudden and reſolute act the party did not expect; and, inſtead of being aggreſſors, as they intended to be, they were paſſive, and, as unhappy defendants, ſhamefully ſcattered and confounded. For they thought themſelves ſo conſiderable, and the king ſo deſirous of his quiet, that he would not (durſt not, as ſome ſaid) have diſſolved them. His lordſhip was conveniently ſituated in Trinity college, his lady being one of the coheirs of the founder of it. He kept a table there, and his family were allowed to battle in the butteries. He was very much at eaſe about company; for none came near him but real friends and acquaintance: for all the factious people looked malicious and ſour, and herded together. The days paſſed eaſily; for, as I ſaid, we were in a theatre; no ſtirring without meeting acquaintance and news.

His next adventure was this. When he was in his weſtern circuit, he and his brother College's trial.

Jones, the other judge, were, with the judges of the midland circuit, put into a commiſſion of oyer and terminer extraordinary, for the trying of Stephen College: an account of which, with a threatening letter delivered into his lordſhip's hands, is already ſet forth in the Examen; ſo we ſhall paſs that by, and ſhall only ſpeak a little of his lordſhip's conduct therein. His lordſhip had not been long in Oxford, before word was brought to him that ſome ſtranger had put a roll of paper into his (College's) hands. Thoſe were ordered to be brought and inſpected; and thereupon it appeared that ſome concerned his defence, and the teſtimony he was to produce at his trial. Theſe were all delivered back to him. Others were found to be downright libels, moſt artfully and maliciouſly penned, to reflect upon the government, and tending to ſedition in the form of ſpeeches, to be pricked in at the trial, as the cues were given. As, for inſtance, when Mr. Attorney hath opened the evidence, ſay thus—, and the like at other pauſes. Theſe were detained; for it had been a prime jeſt if, under the pretence of a defence, the criminal ſhould be allowed to vent ſeditious libels, full of mutiny and reflection, to amuſe the people; and ſo to come forth and be publiſhed in print: when, as the law then ſtood, they were not allowed counſel to plead, but upon queſtion of law ſhewed,

and to be aſſigned, who ſhould behave themſelves modeſtly. Criminals, of that ſort, ſhould not have any aſſiſtance in matters of fact, but defend upon plain truth, which they know beſt, without any dilatories, arts, or evaſions. But this was the chief, if not the only, pretence of clamour againſt the conduct of that trial, which was with all the indulgence in form and matter that could be demanded.

Aaron Smith's impudence.

That the defence was intended to be tumultuous, was apparent from many circumſtances. I ſhall inſtance in one; which was the behaviour of one Aaron Smith, the ſolicitor for the priſoner. His buſineſs formerly lay in the Chancery; but he took into the treaſon trade. He was afterwards, in the Rye plot, ſent, from the council of ſix, to negociate with the Earl of Argyle in Scotland, for a riſing there. He was a violent monſter; and his friends, for his excuſe, uſed to ſay he was half mad: but that would not have ſaved his neck, if he had been caught. He took occaſion to apply to the court for ſomewhat concerning theſe papers; and, being anſwered, he ſtretched him over the bar, and "*have we not reaſon*, ſaid he, *when our lives and eſtates are beſet here?*" The Lord Chief Juſtice roſe up and, without any emotion, ſaid to the clerk, *record theſe words;* and ſat down again. The conſequence of that had been a judgment of miſdemeanor, as effectual

as after a common proceſs and trial. Aaron inſtantly perceived what was to follow, and fell to explaining, excuſing, and varying the words, which he ſaid were not intended of the court. But the judges would not be ſevere upon him at preſent, out of tenderneſs to the priſoner, and not to give occaſion for any to ſay they were prepared to fall hard upon him. But the court took ſecurity of him not to depart without leave of the court; and ſo he eſcaped, for nothing was done farther in that matter. As to the trial in general, it is in print, and will ſpeak for itſelf. But this paſſage of Aaron Smith is not ſo fully repreſented there, as I know the truth was.

The circuits uſeful.

I ſhall conclude this part of my work, concerning his lordſhip's going the circuits as judge, with this note, viz. that conſidering to what ſtation he came to be advanced in truſt and favour at court, which made him very obnoxious to the ill effects of envy, and malice of faction; nothing could have been more propitious to him, than his viſiting moſt parts of England in this manner, whereby he had the opportunity to ſhew to all the gentry, where he came, his humanity, as well as juſtice, and learning in the law. And alſo to make, as he did, many engaging friendſhips with the better ſort. Whereby it became impoſſible, for the mouth of ſlander itſelf, to blacken him in the opinion of the Engliſh nobility and gentry; as

if he had been what the fanatics laboured to have believed of him, an arbitrary, unjuſt judge, a ſlave to the court, and a papiſt in maſquerade.

His lordſhip was ever a profeſſor of loyalty; that is, for the legal intereſt and prerogative of the crown, and the proteſtant religion as by law eſtabliſhed: all which is compriſed under the word loyalty, which, in that time, was much in uſe. And as for the noiſy runners about with that word in their mouths, but nothing moderate, or juſt, in their actions, his lordſhip tolerated, and did not diſcourage them, becauſe their tendency was oppoſite to the other extreme, then termed fanaticiſm; and, in managing all popular elections, did very great ſervice. For the common people are not taken or drawn by the reaſon of things, but by ſhews, pretenſions, and noiſe: and the juſt adherents to monarchy were defamed by the characters, invented and inflicted by theſe men, as being, at beſt, high fliers for prerogative. His lordſhip had an univerſal acquaintance, and diffuſed ſort of amity with moſt perſons conſiderable, in England; and all ſorts of people, at times, had reſort to him either upon viſits, or for buſineſs: he never declined diſcourſing freely, and made no ſecret of his ſentiments, which were entirely in favour of all juſt ways that ſupported the church and crown, and againſt all the oppugners of either. So that who- His lordſhip's principles and converſation.

ever came to ſpy upon him, got nothing but what he publicly profeſſed. Therein he avowed his conſtancy to the laws that were ſufficiently declared to that end; to all which, no exception could be made. But yet the faction, who had the law and the proteſtant religion ſo much in their mouths hated him heartily for it: as for a principle, of all others, the moſt pernicious to their projects. Accordingly, whatever ſort of people came to him, whoſe characters he partly knew, if they were, in any reſpect, plauſible, he declined them not, hoping that if they made no impreſſions, in their way, upon him, he might make ſome, in his way, upon them: and, with that deſign, I have known him hold long diſcourſes with ſome relations and others, of the country for the moſt part, whom he had an eſteem for, to convince them, if poſſible, how miſtaken they were in having ſuch a mean opinion of the king and his meaſures, as lyes had inſpired into them; and to perſuade them that the daily reports ſpread abroad for ſuch purpoſes, were falſe, and I remember moſt of them, with whom he had (out of a ſort of friendſhip) taken pains, ſat giving him the hearing, but were not one whit moved; but, as I gueſs, looked upon him as a court lawyer that ſpoke to his point. His lordſhip hath recommended this demonſtration to diverſe of them. *Keep a book*, ſaid he, *with two columns; and, in one,*

write the daily news and ſtories; and, in the other, againſt them, whether they prove true or falſe: and he believed that not one in fifty would be found to be true. *Why then,* ſaid he, *ſhould you let the news of the town ſink at all with you?* For he found that, when they were preſſed, they laid a freſh ſtory in his diſh; and ſo wonderful abſurd as almoſt amazed him: as that the king had made a league with France, in order to acquire an arbitrary power in England. That the king had ſold to the French, the ſhip timber out of his yards, and ſent carpenters to teach the Frenchmen ſhipbuilding, and the like: And, if his lordſhip had not had an admirable temper, he muſt have quarrelled. Theſe were the innocents that pinned their faith upon ſome that would be thought ofthe country party in the Houſe of Commons, who uſed to ſubtilize with thoſe honeſt gentlemen,and ſend them away, as his lordſhip uſed to ſay, ſoxed with politics.

As his lordſhip's opinion was no ſecret, ſo he had acquired a way of expreſſing himſelf habitually ſecure. For, although all the company underſtood him perfectly well, yet his ſenſe was ſo couched, that, if it had been delivered in the centre of his enemies, no crimination, with any force, could have been framed out of it: and this way he uſed as well with his intimate friends, as with ſtrangers. This is an art worthy to Caution habitual.

be exerciſed by all people, and is uſeful in all times. For if men do not qualify their diſcourſe, when they have their wits about them, and thereby create an habit of caution, it will fall out that, when diſturbed with wine and paſſion, they will, in all companies, certainly let fly, without guard, juſt as, at other times, they uſed to do, and ſo expoſe themſelves to trouble, or worſe hazards. But his lordſhip, beſides his caution in ſpeaking, even in his political writings, though his reflections were of the actions and perſons in his own time, his expreſſions were of ſuch an univerſal nature, that no matter, or perſon in particular, might own them. And what ſignified the ranting dialect, ſome uſed, but to indicate a falſe heart rather than a true one? And ſo his lordſhip found, as may be touched afterwards.

Free from trapans. Story of Mr. Claypole.

Upon this account his lordſhip was very free from trapans, as being known to be ſagacious and cautelous, and not apt to give opportunities: for he entered not into promiſcuous companies, nor dealt in the bottle; but had his friends often, and his ſervants always about him. Once, after dinner, a ſervant told him a gentleman waited in the next room (which he uſed as a cloſet) to ſpeak with him: and his lordſhip, as he paſſed by, ſaw a couple of fellows ſtand in the paſſage, which made him think of eveſdropping. And, being

entered, the gentleman came up to him and, *my lord*, ſaid he, *my name is Claypole.* His lordſhip inſtantly knew him to be (as he was) a deſcendant of the once Lord Claypole, one of Cromwell's ſons-in-law; and then turned round upon his heel and, paſſing his two eveſdroppers who were come nearer the door, went to his company, and merrily told them what a viſion he had ſeen. What his counterfeit lordſhip's buſineſs was, could neither be known or gueſſed at. But, in ſuch caſes, being alone with any perſon, that perſon is maſter, and may ſwear his pleaſure.

Viſits, at Serjeants Inn, and his lordſhip's regard to Sir Jeofry Palmer's family, &c.

His lordſhip, at his chambers in Serjeants Inn, was always obnoxious to promiſcuous converſation; for many would chuſe to viſit him, when they had him alone; where, commonly, the deſign was to pump him: for he was looked upon to be leſs guarded than really he was, and that, from whatever he ſaid, ſomething might be gathered. All which he knew beforehand, and framed his diſcourſe accordingly. But his old acquaintance of the law, as Mr. Longueville, Mr. Johnſon, and others, were as at home with him. His lordſhip retained ſuch a veneration for the memory of his noble friend and patron Sir Jeofry Palmer, that all the old rendeſvouſers with him, were ſo with his lordſhip; and, all his life, he uſed the ſame tradeſmen, as barber, bookſeller, ſhoemaker, ſadler, &c. whom he em-

ployed ſo long as any of them lived; and all the kindred of that name, of which there were not a few, were courted by his lordſhip. And his daughter, Mrs. de la Fountain, he revered: and, in her family, though her huſband was, in good order and virtue, (and who was not?) inferior to her, his lordſhip was next to a domeſtic. But he never was ſo well, as when any of his family relations, whom he was continually obliging, one way or other, were with him. And how he extended his benevolences to the remoteſt of his kindred, will be ſhewn in fit place.

Suſpicious acquaintance.

His lordſhip, at his meals, had uſually none but acquaintance, or relations, ſuch as had a ſort of title to be ſo free; for he kept no publick table, though a plentiful one. And, of theſe, ſome were in the confidence of the anticourt party. As, particularly, Mr. Paul Foley, who became an acquaintance through a ſort of relation, and improved it much by communicating his obſervations in the learning of records, to which he had applied himſelf very cloſely. He ſhewed his lordſhip a book which he had compiled, which was deſigned to go beyond the ordinary collectors, ſuch as Cotton, Prin, &c. His lordſhip grew every day more and more fond of that knowledge, and was glad of ſuch an acquaintance, whoſe diſcourſe was incentive to his deſires; and, at that time, he had

more leiſure to attend to it, than when he was a practiſer. But more of this elſewhere. How this gentleman ſignalized himſelf, afterwards, is no ſecret. But I can remember, ſo early, that I heard him ſay in his lordſhip's houſe, that *things would never go well till forty heads flew for it.* He had alſo very ſingular opinions; one was that *all foreign trade was loſs, and ruinous to the nation.* But ſome proceedings about that time, touched upon in the Examen, interpreted that paradox: for the mortal evil of foreign trade was the great ſupply it brought to the crown, by which it could be ſupported, without being continually at the mercy of the parliament for ſupplies. When his lordſhip was named in the Houſe of Commons, in order to be criminated, he was pleaſed to ſay in the houſe, *that he certainly knew that perſon to be of arbitrary principles, becauſe he had heard him diſcourſe to that purpoſe at his own table.* This behaviour of that gentleman, when his lordſhip ſtood moſt in need of the ſervice of his friends, doth ſufficiently demonſtrate the neceſſity of his lordſhip's conſtant caution in converſation with all ſorts, friends and enemies. For the time was ſo nice that a word awry did a man's buſineſs, if he were unpopular; elſe, one would think I have too much exaggerated the cautious practice in all his lordſhip's converſe. And yet, with ill people, even the utmoſt cau-

tion falls ſhort, as was the very caſe with that gentleman. Mr. Tirrel alſo uſed to come freely to his lordſhip. I do not remember he then owned the deſign, which he hath, in part, executed ſince, of writing an Hiſtory of England. But his diſcourſe, falling on ſuch ſubjects, was very agreeable to his lordſhip; though, at that time, he was looked upon as one of the antimonarchiſts.

Surpriſed into a factious dining cabal:

His lordſhip did not often dine from his own houſe; and, when he did, it was commonly at a particular virtuoſo's, as with Sir Peter Lely, Mr. Hugh May, Sir Sam. Moreland, or the like. Once, dining with Mr. Hugh May in Scotland yard,* Sir Henry Capel, who was of his lordſhip's relation, and long acquaintance, made one. Among other diſcourſe, Sir Henry Capel was urged much to ſay, why they, meaning the country party, urged a certain matter ſo violently in the Houſe of Commons; and yet there was no tolerable reaſon, in all the debate, given for it. At laſt, he anſwered *that they did not uſe to give the true reaſons that ſwayed them in debates, to the houſe.* His lordſhip thought it a ſtrange account. But I believe, if it was ſo then, it hath been much more ſo ſince; and, as ſtrange as it may ſeem to be, it is commonly

* He was one of the ſurveyors of the king's buildings, and was the regulator of Windſor caſtle.

the parliament driving principle. As the times grew warmer, his lordſhip endeavoured to be more retired, and leſs cared to dine where was any diverſity of company. But once he was caught in a trap, and found himſelf in the head quarters of a dangerous cabal. It happened thus. Sir William Scroggs, a ranter, but (except in the affair of Oates) on the right ſide, was promoted to the Chief Juſtice's place in the King's Bench. But, when the court intereſt in parliament was wavering, and very like to fall, and my Lord Shaftſbury with his followers, appeared to have an aſcendant, and was actually taken into the privy council, his King's Bench lordſhip thought the intereſt not to be ſlighted; and, accordingly, he opened a ſocial commerce with them, and made one at their circulary dinings; and the turn came to dine with him. He was ſo obliging as to invite his brother chief of the Common Pleas, who went, not dreaming of his company, but expected that ſome noblemen, of another order, might be there. When the company was aſſembled, it conſiſted of the Earl of Shaftſbury, the Biſhop of London, the Lord Macclesfield, and others of the moſt diſtinguiſhed oppoſers of the court. They careſſed his lordſhip very much as a new comer, whom they were glad of the honour to meet, and talked about a time to dine with him; all which (as they ſay) was *water in his ſhoes.*

But after dinner he got himſelf clear, and was as careful not to be ſo complimented any more. And he was much diſpleaſed with his ſuperior chief, for engaging him ſo untowardly.

Character of Sir William Scroggs.

This Sir William Scroggs was made Lord Chief Juſtice of the King's Bench while his lordſhip ſat in the Common Pleas. He was of a mean extract, having been a butcher's ſon, but wrought himſelf into buſineſs in the law, was made a ſerjeant, and practiſed under his lordſhip. His perſon was large, viſage comely, and ſpeech witty and bold. He was a great voluptuary, and companion of the high court rakes, as Ken, Guy, &c. whoſe merits, for ought I know, might prefer him. His debaucheries were egregious, and his life looſe; which made the Lord Chief Juſtice Hales deteſt him. He kept himſelf very poor, and, when he was arreſted by King's Bench proceſs, Hales would not allow him the privilege of a ſerjeant; as is touched elſewhere. He had a true libertine principle. He was preferred for profeſſing loyalty: but Oates coming forward with a ſwinging popularity, he (as Chief Juſtice) took in and ranted on that ſide moſt impetuouſly. It fell out that when the Earl of Shaftſbury had ſat ſome ſhort time in the council, and ſeemed to rule the roaſt, yet Scroggs had ſome qualms in his politic conſcience; and, coming from Windſor in the Lord Chief Juſtice North's

coach, he took the opportunity. and deſired his lordſhip to tell him ſeriouſly, if my Lord Shaftſbury had really ſo great power with the king as he was thought to have. His lordſhip anſwered quick, *no, my lord, no more than your footman hath with you.* Upon that, the other hung his head, and, conſidering the matter, ſaid nothing for a good while, and then paſſed to other diſcourſe. After that time, he turned as fierce againſt Oates and his plot, as ever, before, he had ranted for it; and, thereby, gave ſo great offence to their evidenceſhips, the plot witneſſes, that Oates and Bedloe accuſed him to the king, and preferred formal articles of diverſe extravagancies and immoralities againſt him. The king appointed an hearing of the buſineſs in council, where Scroggs run down his accuſers with much ſeverity and wit; and the evidences fell ſhort; ſo that, for want of proof, the petition and articles were diſmiſſed. But, for ſome jobs in the King's Bench, as diſcharging a grand jury, &c. he had the honour to be impeached in parliament, of which nothing advanced. At laſt he died in Eſſex-ſtreet of a polypus in the heart. During his preferment, he lived well, and feathered his neſt; for he purchaſed the manor of Burntwood in Eſſex. It was obſerved of him, that every day, in his houſe, was holyday. His lady was a very matronly good woman; ſhe died long before him. He had one ſon

who lived not many years after him; for he was a ſufferer in the wars of amour. He had two daughters; one of whom was married to Sir Robert Wright, and live to ſee his misfortunes; for, at the revolution he was clapt up in Newgate, and there died. The other daughter, ſometime the widow of Mr. Kilbie a lawyer, married the truly noble Charles Hatton, and may be yet living.

Of putting down coffee-houſes.

About this time, Sir William Jones being his majeſty's attorney-general, there was ſuch licentiouſneſs of ſeditious, and, really, treaſonable diſcourſe in coffee-houſes, of which there were accounts daily brought to the king, that it was conſidered if coffee-houſes might not be put down. Then it was ſcarce poſſible to cohibite people's talk; but, if the opportunities of promiſcuous and numerous aſſemblies of idle ſpenders of time were removed, ill men would not be able to make ſuch broad impreſſions on peoples minds as they did. And the moſt likely way to do it was thought to be by a proclamation recalling all their licences, and prohibiting the granting any new ones; and, under this, diverſe points of law were ſtarted, whereupon the king commanded that all the judges ſhould attend, to give their advice touching the proclamation: and his lordſhip and five other judges, being all that were in town, attended. His lordſhip, upon the main,

thought that retailing of coffee might be an innocent trade; but as it was uſed to nouriſh ſedition, ſpread lies, ſcandalize great men, and the like, it might alſo be a common nuſance. But I wave here the ſtating the ſeveral points, and the reſolutions of the judges, and wherein they differed in opinion, becauſe it is fully accounted for in the Examen. But I remember well that the faction was much incenſed at this ſuppreſſion of coffee-houſes, without which it was impoſſible for them to carry on their trade. And, in particular, they ſaid that Mr. Attorney ſhould anſwer it in parliament; and although the leaders, then, were his good friends, and he had reaſon to think jeſted with him, yet this ſame anſwering in parliament was a ſerious buſineſs with one who had a natural timidity which his reaſon could never conquer: and it occaſioned him no ſlight raillery from his party friends.

Of lies and libels.

As to the buſineſs of lies and libels, which, in thoſe days, were an intolerable vexation to the court, eſpecially finding that the community of gentle and ſimple ſtrangely ran in with them; it was moved that there ſhould be more meſſengers of the preſs, and ſpies, who ſhould diſcover ſecret printing-houſes, (which, then, were againſt law) and take up the hawkers that ſold libels, and all other perſons that diſperſed them, and inflict ſevere puniſhments

on all that were found guilty. But his lordſhip was of a very different opinion, and ſaid that this proſecution would make them but the more enquired after; and it was impoſſible to hinder the promulgation of libels: for the greedineſs of every one to get them, and the high price, would make men, of deſperate fortunes, venture any thing: and, in ſuch caſes, puniſhments never regulate the abuſe; but it muſt be done, if at all, by methods undermining the encouragement: yet, if any were caught, he thought it was fit to make ſevere examples of them. But an extraordinary inquiſition to be ſet up, and make ſo much noiſe, and the puniſhment falling, as was moſt likely, not on the authors and abettors but, ſome poor wretches that ſought to get a penny by ſelling them, would, as he thought, rather incenſe, than abate the abuſe. His notion was that his majeſty ſhould order nothing extraordinary, to make people imagine he was touched to the quick; but to ſet up counter writers that, as every libel came out, ſhould take it to taſk, and anſwer it. And, ſo, all the diurnal lies of the town alſo would be met with: *for*, ſaid he, *either we are in the wrong, or in the right; if the former, we muſt do as uſurped powers, uſe force, and cruſh all our enemies, right, or wrong. But there is no need of that, for we are in the right; for who will pretend not to own his*

majeſty's authority according to law? And nothing is done, by his majeſty and his miniſters, but what the law will warrant, and what ſhould we be afraid of? Let them lye and accuſe till they are weary, while we declare at the ſame time, as may be done with demonſtration, that all they ſay, is falſe and unjuſt; and the better ſort of the people, whom truth ſways, when laid before them, will be with us. This counſel was followed; and ſome clever writers were employed, ſuch as were called the Obſervator and Heraclitus, for a conſtancy, and others, with them, occaſionally; and then they ſoon wrote the libellers out of the pit, and, during that king's life, the trade of libels, which, before, had been in great requeſt, fell to nothing. And this was one of the viſible good effects of the meaſures of the court and miniſtry, at that time, which were, in all things, to act conformably to the eſtabliſhed religion and the laws. I will not meddle here with the plots of Oates and Fitzharris, and all the other, both ſham, and real, in that king's reign, becauſe they are fully ſet forth in the Examen; only, in order to introduce his lordſhip's opinion and reaſonings upon them, I ſhall juſt walk over them in the following manner.

Fury of Oates's plot, to be checked by a pamphlet.

After the year 1666, the reign of king Charles II. was happy in being free from plots, I mean ſuch as publickly appeared,

until about September, 1678, when that deviliſh impoſture ſtiled of Oates, came forth, and afterwards there followed the horrid conſpiracy, called the Rye plot, and, as fringes to theſe, other minor plots, as will be found in the accounts given of them in the Examen. During this time his lordſhip ſat in holy peace, under his old oak the court of Common Pleas, which had nothing to do with criminals; and in the grand commiſſion of oyer, &c. at the Old Bailey, where the Oateſian ſtorms were moſt impetuous, the Lord Chief Juſtice of the King's Bench ſteered the veſſel, and the other judges had little or no ſhare in the conduct, whereby his lordſhip, in the main, was rather an obſerver, than an actor, in thoſe proceedings towhichhung the iſſues of life and death. He was not a little concerned to ſee men noiſed out of their lives, as the twelve prieſts were, and that nothing could reſiſt the fury of the people, that, like a hurricane, purſued them. And that which was moſt lamentable was, that the king's attorney ſhould be poſſeſſed, and the Chief Juſtice, that preſided, ſhould be taken in the head, and even the parliament ſounding loud, and the populace little leſs than diſtracted; and all tending to blood, of which no end was diſcerned; but it ſeemed that queſtion and conviction, were one and the ſame criſis. His lordſhip ſaw plainly that this popular inſanity could not even

by the ſtrongeſt reaſoning be moderated, but to do that muſt be a work of time: and as for open oppoſition by pamphlets, there was enough publiſhed by ſome Roman Catholics; but inſtead of making any impreſſion, however cogent their reaſons and arguments were, the attempts were cried out upon, as ſo many inſtances of a ſhameleſs impudence, pretending to prove falſe what the community were reſolved ſhould be true, and the party name (that is papiſt) held forth, was a ſufficient confutation of them all. Nevertheleſs his lordſhip was of opinion that a pamphlet might be contrived and wrote with ſuch hiſtorical deductions and temper, that might in ſome meaſure, if not wholly, qualify this diſtemper of the public, and that, what direct oppoſition could not, inſinuation might effect.

The inſtructions, memoirs of faction.

Purſuant to this thought his lordſhip applied himſelf to prepare inſtructions for ſome expert pamphleteer, who had a popular ſtile and addreſs, to treat upon the ſubject of Oates's plot; and after his way of extempore writing, which was familiar, and juſt as he uſed to ſpeak, he drew up theſe inſtructions which, ſo far as they go, might have paſſed for the pamphlet itſelf, but he ſtopt at the facts, which were left to the writer to deduce as he ſaw occaſion. He had no opinion of his own pen for ſuch purpoſes as theſe, and it alſo required

more time and thought, than he could ſpare, to work them up to an height ſufficient to fall upon and cruſh a popular prejudice. I do not know that theſe inſtructions were ever delivered out to be made uſe of, but believe they were not, and that he kept them by him ſo long, that, new ſcenes of affairs emerging, they were become leſs needful. After the diſcovery of the Rye conſpiracy, his lordſhip's mind was ſo touched with the diſmal effects of faction and ſedition, in the reign of King Charles II. that he fancied to compoſe their hiſtory, which, in the ſame extemporary way he deduced from the reſtauration down to the concluſion of that diſcovery, and gave his paper to a friend, deſiring he would write it over with large margins, that he might adjoin ſuch additions and alterations as he ſhould think fit to make; which was done; and he made ſome, but very little, alteration, as putting out a name, or the like, that might give offence. (Part of theſe papers are in the Examen.) As to his lordſhip's perſonal acting and concern in the proceedings grounded on the many plots that appeared in his time; firſt, as to Oates, he had not the leaſt hint or intimation of any ſuch roguery, as his was, before the information or narrative was ſworn before Juſtice Godfrey, and then not early, but as the matter became bruited abroad. He once heard Oates preach at St. Dunſtan's, and

touch admired his theatrical behaviour in the pulpit, he prayed for his very good lord and patron the Duke of Norfolk, which made his lordſhip ſuſpect him to be warping towards popery. And when his lordſhip came to know the particulars of his diſcovery, although the king's life (forſooth) was to be ſaved, he took the whole to be an impoſture calculated to diſturb the publick, and bring evils upon his majeſty, and after he had diſcourſed with the Earl of Danby, who at firſt appeared a fautor of it, his lordſhip found ſuch deſultory ſteps taken, as could agree with nothing but a cheat, and was confirmed in his opinion accordingly.

'I mentioned his lordſhip's felic[illegible] in having, by his place, little to do [illegible]ri-minals; he had but one of the many plot trials to manage, and that was of Nat. Reading, who was not charged for treaſon, but for ſubornation and tampering. He acted as counſel for one of the lords in the Tower, committed upon teſtimony of Oates, and his collegue Bedloe; and treated with Bedloe for a reward, if he would ſoften his evidence againſt his client; and Bedloe, by crafty advice, drew him into a ſnare, ſo that there was clear evidence of ſubornation againſt him. Whatever the plot was, this was as foul a fact as could be, when a counſel at law ſhall tamper, and by bribes corrupt the king's evidence, in a

Concerned only in the conduct of Nat. Reading's trial, but little in others.

caſe of high treaſon: and upon his trial he was convicted, and puniſhed with the pillory. In the reſt of the trials, as they are printed, his lordſhip ſcarce ſpoke, but Chief Juſtice Scroggs led the van. I find in one of them, his lordſhip took occaſion to ſay, *as for the plot, that is as clear as the ſun;* which ſhining irony might have been ſpared. But the behaviour of all the judges, except the aforeſaid chief, was paſſive; that is, without interpoſing their opinions of the evidence, and the credibility of their ſtory; which is often done by judges, for aſſiſtance of the jurymen, in common trials; and many, in latter times, have thought that the ſame ought to have been done h And nothing can qualify the ſilence, b inconceivable fury and rage of the co , gentle and ſimple, at that time, and the conſequences of an open oppoſition to the chief, whoſe part it was to act, as he did, demanding no aſſiſtance of any of them; which oppoſition might have been fatal in many reſpects: for the credit of the witneſſes muſt have been impeached, which the time would not bear; and it was not in their office to intermeddle; for, as to the fact, the jury is to anſwer. When it is ſo done by the co-aſſeſſors, it is for diſcretion, and not duty; the moſt cogent reaſon was, that the prejudice was ſo univerſal, and ſtrong, that if an apoſtle had ſpoke againſt it, no impreſſion had taken place, nor had

it done the priſoners any ſervice; but on the other ſide, not only the rabble but, even the parliament itſelf, had flounced at it; which conſideration turned the ſcales of the diſcretion, and made thoſe judges rather let a veſſel drive, which they could not ſtop, and reſerve themſelves for fairer opportunities, when ſuch might happen, for them to do ſome good, without pretending to remove mountains. Thus much I have thought to alledge in favour of the judges paſſiveneſs at thoſe trials; whereof the full ſtrength of reaſon can ſcarce be made appear ſo ſufficiently as the proper time, in real circumſtances, demonſtrated.

Error in condemning Lord Stafford.

That which, in all the courſe of theſe outrages, moſt affected his lordſhip with admiration, as well as commiſeration, was the deplorable caſe of the Earl of Stafford, who was pronounced guilty, ſeemingly, upon the groſſeſt error, in common juſtice, that ever was known. Very few, if any, of the peers that condemned him, would own that they believed the witneſſes, who ſwore the treaſon againſt him; and his lordſhip expoſtulated with ſome of them (that he could be free with) to know how it was poſſible, being ſo perſuaded in their own minds, they could declare him guilty? Their anſwer was, that they were not free in the caſe, but were bound to judge according to the proof of facts; and here the witneſſes ſwore the facts, *ergo*, &c. His lordſhip replied

that this was contrary to the very inſtitution of trials; for it is the proper buſineſs of peers and juries to try, not the grammatical conſtruction of words, which every ſchool-boy can tell, but the credibility of perſons, and things; which require a collation of circumſtances, and a right judgment thereupon; and God forbid that the worſt of villains ſhould have it in their power, by poſitive ſwearing, to take away any man's life, or eſtate; and it is ſo far from that, that it is every day's direction of judges to jurors, viz. if you believe the witneſſes, find, elſe not. This error is reaſonably to be ſuppoſed, to have happened to many in ſincerity, though ſome fancied a ſpice of the politick in the caſe, leſt it might prove as happened, when the not guilty lords were mobbed in Cha. I.'s time. But here the caſe was ſo far otherwiſe, that, of the two, the guilty ſide was in more danger of popular inſults than the not guilty.

His majeſty's juſtice and clemency, and candour of all the proceedings.

I might properly here enumerate and particulariſe the many falſe ſhams, which, after the mighty Oateſian engine fallen, troubled the court, and alſo at large decypher the Rye conſpiracy, becauſe his lordſhip had the moſt to do in conducting the ſeveral examinations of the ſecretary's office, and to ſee that what was done ſhould be in due form, and according to law; but all thoſe matters are ſo well deſcribed by his lordſhip, in his papers before touched,

that a tranſcript would be the beſt account, which here would be ſuperfluous, becauſe it is already to be found in the Examen. His lordſhip's greateſt content lay in his majeſty's preſence, who almoſt conſtantly attended, and was himſelf witneſs of the ſincerity, diligence, and prudence of his miniſters; whereas accounts, coming to him by the report of others, would be defective, and, probably, not without ſome ſiniſter miſrepreſentations. And, on the other ſide, the miniſters, and particularly his lordſhip, as he often declared, had the pleaſure of obſerving his majeſty's clemency, juſtice, and inclination to mercy; which, through the whole proceeding, were egregious. He puniſhed no man, againſt whom the evidence did not charge the treaſon home (though in other reſpects they were guilty enough) in caſe they declared all they knew; nay diverſe traitors, that made ingenuous confeſſions, were ſpared, though no great uſe was to be made of them; and the king ſaid, *he would not take away any man's life, becauſe he knew no more.* Of theſe diverſe brought before the king, come on their knees, holding up their hands, begging his mercy, for their poor wives and children's ſakes; which gave the king (always facetious) occaſion to ſay, *he wiſhed all his ſubjects had wives and children, for whom they would moſt regard.* And for the honour of his majeſty and his miniſters, I

muſt obſerve that no man was kept long in priſon, without bail, or trial, and none brought to trial without a convicting evidence, no rewards, nor tempting encouragements, leading queſtions, threats, or other undue means held forth to draw from them farther than plainly to declare all they knew. And after all, that the effects of the chief criminals, that ſuffered, were not made a prey to courtiers, but, in diverſe inſtances, graciouſly reſtored to the wives and children of the ſufferers. And if ever, in caſe of a conſpiracy leſs execrable than this of the Rye, there is an inſtance of juſtice ſo legally purſued, and, in the concluſion, well tempered as here, I deſire it may be brought forth and known, as this now is, to the intent it may never be forgot.

Scotchmen ſent home to be tried.

Among other guilty perſons, ſome Scotchmen were diſcovered and taken; and, becauſe their ſcene lay in Scotland, they could not be indicted and tried here; therefore it was thought fit to ſend them into their own country to be tried. But the time being nice, and the court deſirous that no meaſures ſhould be taken, which might be pretended not legal; and it being the mode to cavil at every ſtep, and raiſe moot points, like finding knots in bulruſhes, as was done in this particular caſe, whether theſe men might be ſent into Scotland or not: the king thereupon ordered his at-

torn[e] ſ-general to give his opinion in writing; which was, that his majeſty might ſend his Scotch ſubjects into Scotland, to be puniſhed for offences committed there.

Before we part from this grand conſpiracy, I muſt remember that it was thought fit for the ſatisfaction of the peoples minds, who were in a great amaze, and conſequently doubt of the reality of this enorme plot, to publiſh a royal declaration of the very facts of it, and of all the material circumſtances, punctually ſtated, and all out of the depoſitions of the witneſſes; to the veracity whereof it ſhould not remain in any one's power to object; and ſo as to leave no colour for any perſon to doubt the juſtice of his majeſty's proceedings thereupon. This was prepared and compoſed moſtly, if not wholly, by his lordſhip, which I will with more aſſurance profeſs, becauſe I have heard his lordſhip often, in diſcourſe, expreſs moſt of theſe ſingular notions and turns that are in it; and the like may be found in his writings: as for inſtance——*that, after all endeavours by way of ſedition failed, the rebels reſorted to arms, and aſſaſſination;* with other as ſignificant paſſages. The declaration itſelf is penned with that exquiſiteneſs and caution, and all upon the ſteps of truth, made good by teſtimony, as may well be aſcribed to one of his lordſhip's accompliſhed knowledge of the law, experience of affairs, and happy turns

Penned the declaration, and that well accepted.

of thought, and expreſſion in buſineſs. And I might have inſerted this in the very words, as part of his lordſhip's pen work; but have declined ſo to do, becauſe, at the time, it muſt needs have been laid before, and conſidered by the reſt of the miniſtry, and by them, in ſome reſpects, altered or corrected, as they might think proper. After this declaration was publiſhed, and (as was commanded) read in churches, the people returned their joyful ſenſe of the king's ſafety, after the great danger he had been in, by numerous addreſſes from all parts of the kingdom, which gave ſuch a ſtun to the rebellious party, and their friends abroad, that little ſign of any reſurrection to action appeared in them, while that good king lived; though it is preſumed their trance was not ſo profound, but they lay watching for freſh opportunities, from alterations in the methods of the government, and the miniſtry, to be moving again, and at length, they were gratified ſufficiently, and due uſe thereof was made, by the changes that followed.

Dr. Sprat's hiſtory of the Rye plot, ſneakingly recanted.

But his lordſhip did not think this declaration enough; for, by many years practice of lies and miſconſtructions of the publick adminiſtration, the peoples minds had been too much corrupted towards a prejudice againſt their government, and they were become inclined to believe all the evil that was lyingly affirmed of it: and

this diſeaſe could not be cured on the ſudden, but by time and application of due remedies to ſet them right. Therefore his lordſhip adviſed that not only all the depoſitions, as they were ſworn, ſhould be publiſhed in print, but alſo, conſidering ſuch matters would not be pleaſant or inviting to be read by the common people, that a well-penned relation of the whole conſpiracy ſhould introduce them; which ſhould be made as inviting to read, as the others apt to convince, which muſt happen, being all along referred to them. The advice was approved, and Doctor Sprat, then Biſhop of Rocheſter, a moſt polite Engliſh writer, was employed to do it; and, having all the depoſitions truly copied before him, he performed the taſk moſt completely, as the book itſelf ſufficiently demonſtrates. This had been a ſtately monument of honour to that reverend prelate, if he had not kicked down all the merit of it, by a puſillanimous behaviour; for, after the Revolution, when he feared being called to an account for acting in King James the Second's high commiſſion court, he publiſhed in print two degenerous epiſtles of recantation to the Earl of Dorſet; the latter moſt ſneakingly apologiſeth for his writing this book, in which I have not obſerved one ſentence, which, even in that time, could juſtly be made criminal: he ſays it was unwillingly drawn from

him; and he hopes he is not to anſwer for what he did not, as well as for what he did write; and that it was ſhewed to the Lord Keeper North, who added ſome things, that had eſcaped him; whence we are to ſuppoſe, that all, which did not then pleaſe, muſt be attributed to the Lord Keeper, and not to him. A ſtately apologetick! But grant half of it had been added, or corrected by the Lord Keeper; who could better adjuſt ſuch a relation, than he who was at the helm of all the examinations, and had both ſkill and will to do it according to truth? His epiſcopal lordſhip had done well to have ſhewn, in his letter, what was ſo added, and then the ſaddle would have fallen on the right horſe, or at leaſt to have expreſſed wherein he was to have been a ſufferer, if he had been called to anſwer for the whole as it was; but ſome mens timidity offuſcates their underſtandings, though otherwiſe never ſo bright.

The vindication of vindications, by the committees of enquiry.

It would be an ungrateful thing to paſs over in ſilence the greateſt vindication of all theſe proceedings againſt the Rye plotters (in the direction of which his lordſhip had the greateſt ſhare) that ever happened to a government, and its miniſtry, ſince the world began. And that is (I ſay not of the plotters themſelves, but leave that to ſober reflection, but) of the adverſe party, in full rage and power, and breathing all that revenge which formerly they had menaced,

and confirmed with numberleſs oaths, and execrations. If this be the caſe, it will not be thought I have here dealt in hyperbole. After the Revolution, when the aſſemblies of Lords and Commons met at Weſtminſter, the matters, by way of inquiſition retroſpected, are reducible to two heads. One was concerning the proceedings in the city of London, in the choice of ſheriffs, and the conſequences; and the other was the trials and convictions of the culpables in the Rye conſpiracy. The former was undertaken by the Commons, and the other by the Lords. The Commons ſummoned Sir John Moor, that had been Lord Mayor, and Sir Dudley North, with Sir P. Rich, his partner, ſheriffs, and all perſons who had to do in the city, about the common hall. And theſe were examined touching their right, and the manner of their behaviour, and they anſwered plainly and candidly; and though tempted to accuſe perſons who were dead, as the Lord Keeper North, and Sir Leoline Jenkins, of ſomewhat they could have called crime, anſwered negatively, and, to their own charge, fully, and went no farther; and finally, there being no fault found in them, they were all diſcharged, and nothing more ſaid to them. The other inqueſt, concerning the Rye criminals, went deeper, and every one, that was examined, was ſworn; for the Lords may adminiſter an oath, but

the Commons may not. The executions of the criminals (for brevity) were pre-judged to have been illegally inflicted, and ſo not enquired into, but the ſuffering perſons were preſuppoſed to have been murthered, and the committee of Lords was appointed to enquire by what and whoſe means thoſe perſons came to be murthered, or to that effect, as the journals will ſhew: and for this reaſon, that committee was called the committee of murther; which muſt needs terrify thoſe that were ſummoned to appear before it. In ſhort, they ſummoned all the officers, witneſſes, ſome counſel, and every particular perſon who had, as they were informed, ſaid or done any thing relating to any of thoſe trials; and, as I ſaid, examined all upon oath, in order to find out ſome irregularity, or corruption, in what had been done about theſe matters. And after all the teiſing, ſcrewing, good words, and bad words, as ſome thought fit to uſe towards particular perſons examined, there was not any one peccadillo diſcovered, nor any action or ſpeech of any perſons, in or out of authority made known, which could be laid hold on as an abuſe or miſdemeanor, that might be cenſured; and ſo the committee fell, and no more news of murther. And this is that vindication of vindications I mentioned before; which, for the honour of his lordſhip as well as the reſt of the loyal party, I have extended more fully than otherwiſe needed

have been. And, for the cloſe, I muſt needs obſerve, that it was wonderful, that in the ardor of thoſe heated times (which may be imagined, but hardly expreſſed) the miniſters and agents ſhould not only be ſo intelligent, but withal careful of the forms and ſubſtance of juſtice, and their duty, that, on ſuch a dire inqueſt as was not forethought ever to come over them, not one fault ſhould be found, neither wilful, nor out of human infirmity or oſcitancy. O the virtue touched in *Horace!* *Integer vitæ ſceleriſque purus.*

END OF VOL. I.

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